UNIFORM MARRIAGE AND DIVORCE LAW

JUNE-JULY 1927

The Question of a Uniform Marriage and Divorce Law

History of Efforts to Secure Uniformity

By Federal Action and By State Action

A Summary of Important Provisions in Present State Laws

Pro and Con Discussion

on

Should Congress Pass the Capper Amendment?

Is a Uniform Marriage and Divorce Law Desirable?

Is Federal Action Preferable to State Action?

Other Regular Features

FIVE DOLLARS A YEAR

FIFTY CENTS A COPY

The Congressional Digest

Not an Official Organ, Not Controlled by Nor Under the Influence of Any Party, Interest, Class or Sect

ALICE GRAM ROBINSON, *Editor and Publisher*.....Munsey Building, Washington, D. C.

Published Every Month, except for July and August. Current Subscription Rates: $5.00 a Year, Postpaid in U. S.; in Canada $5.25; Foreign Rates $5.50; Current Numbers 50c a copy; Back Numbers 75c a copy; Volumes III, IV and V, Bound $7.50 each; Unbound, $6.00. Address all Orders and Correspondence to:
The Congressional Digest, Munsey Building, Washington, D. C.

Entered as Second-Class Matter September 20th, 1921, at the Post Office at Washington, D. C., Under the Act of March 3, 1879.

Contents for This Month

The Congressional Digest

Volume VI | June-July, 1927 | Number 6-7

Special Feature This Month:

Question of a Uniform Marriage and Divorce Law

History of Efforts to Secure a Uniform Law
Census Statistics on Marriage and Divorce, 1887-1925
States which Have Adopted Uniform Laws
The Question of a Divorce Law for Canada
Synopsis of Marriage and Divorce laws in the States
Pro and Con Discussion

History of Efforts to Secure a Uniform Law on Marriage and Divorce

I. By Federal Action

II. By State Action

Editor's Note—The movement to establish one law to govern marriage and divorce in the United States has followed two lines of action; one by an effort to secure an amendment to the Federal Constitution giving Congress the power to enact a federal law on marriage and divorce, and the other by an effort among the states to adopt a uniform law regulating marriage and divorce.

I. By Federal Action

1871—The first amendment to the Constitution on the subject of federal control of marriage was introduced in the House on Dec. 11, 1871, in the 42d Congress, by Mr. King of Missouri. The amendment proposed to prohibit the intermarriage of persons of the white and colored races. The author of the proposal apparently believed that the States could not prohibit such marriages under the fourteenth amendment but this power has been repeatedly upheld by the Courts.[1]

1884—On Jan. 8, 1884, the first amendment for a uniform marriage and divorce law was introduced by Mr. Ray of New York in the 48th Congress. It was referred to the House Judiciary Committee.

Federal Census on Marriage and Divorce

1887—An organization known as the New England Divorce Reform League became interested in securing federal action on marriage and divorce and through its influence Congress authorized a Federal census of marriage and divorce to be taken for the period of 1867-1886.[2]

1896—Since 1884 when the first uniform marriage and divorce amendment was introduced, up to 1896 there were eleven similar resolutions introduced in Congress. Of these two were reported adversely, and one resolution (S. Res. 2), introduced by Mr. Dolph of Oregon in the 50th Cong., 1st session, led to an interesting discussion but no action was taken.[3]

Divorce Law for Territories

1896—On May 25, 1896, an act known as the Gillett Divorce Act, sponsored by the International Reform Bureau and promoted in Congress by Representative Frederick H. Gillett of Massachusetts (later Speaker of the House and now a member of the Senate), became a law. This related to divorces in the Territories over which Congress has plenary powers and read as follows: "No divorce shall be granted in any Territory unless the party applying shall have resided continuously in the Territory for one year next preceding the application."

1896-1901—During the next five years, twelve resolutions were introduced providing for a constitutional amendment giving Congress power to legislate on marriage and divorce. Of these nine received no action in their committees and three were reported adversely.[4]

District of Columbia Divorce Law

1901—The revised Code of the District of Columbia approved March 3, 1901, includes the District of Columbia Divorce law, also sponsored by the International Reform Bureau. This makes absolute divorce in the District of Columbia possible only in the case of adultery and permits the innocent party only to remarry.

Supreme Court Decision on Divorce

1901—In the case of Atherton vs. Atherton, decided April 15, 1901 (181 U. S. 171), the Supreme Court of the United States declared an important principle as to the extraterritorial validity of a decree of divorce. The Court held that since "in this case the divorce in Kentucky was granted by the Court of the State which had always been the undoubted domicile of the husband, and which was the only matrimonial domicile of the husband and wife," therefore service on the absent defendant though domiciled in New York State with her parents, did give the Kentucky court jurisdiction over the person of the absent wife, although such service were only constructive, either by publication of process, or by sending a copy of the summons through the mail to her address in New York.

1902-1905—During this period four resolutions for constitutional amendment to authorize Federal action on marriage and divorce were introduced in Congress, three

[1] Ames, H. V. Proposed Amendments to the Constitution of the United States, During the First Century of its History, p. 190.

[2] Johnsen, Julia E. Selected articles on Marriage and Divorce, p. 2.

[3] 69th Cong., 1st sess., S. Doc. No. 93. Proposed Amendments to the Constitution. Arranged by Charles C. Tansill.

receiving no action in the committees and the last one having been reported adversely.

The Case of Haddock vs. Haddock

1906—On April 12, 1906, the Supreme Court of the United States rendered one of the most important and epoch making decisions on the question of divorce in the case of Haddock vs. Haddock (201 U. S. 562).

Mr. Haddock had left his wife in New York where they were domiciled and went to Connecticut where, after a lapse of years, he acquired a domicile. In accordance with Connecticut laws, he obtained a divorce in Connecticut, notice of the actio' being by publication of process on the wife who remained domiciled in New York and never appeared in the action. Mrs. Haddock subsequently sued for divorce in New York and obtained personal service in that State on Mr. Haddock who pleaded his Connecticut divorce. New York did not recognize the Connecticut decree and in this was substained by the Supreme Court which held that the divorce Mr. Haddock had obtained against his New York wife in Connecticut was good in Connecticut but not in the State of New York.

President Roosevelt's Message

1906—In his message to Congress of Dec. 3, 1906, President Roosevelt said: "I am well aware of how difficult it is to pass a constitutional amendment. Nevertheless, in my judgment the whole question of marriage and divorce should be relegated to the authority of the national Congress. At present the wide differences in the laws of the different States on this subject result in scandals and abuses; and surely there is nothing so vitally essential to the welfare of the Nation, nothing around which the Nation should so bend itself to throw every safeguard as the home life of the average citizen. The change would be good from every standpoint. In particular it would be good because it would confer on the Congress the power at once to deal radically and effectively with polygamy."[4]

Subsequent to this message Congress authorized a second census on marriage and divorce to cover the twenty-year period from 1887-1906.

1906-1913—During the next seven years six resolutions were introduced in Congress proposing a Constitutional amendment on marriage and divorce but none received action by their committees.

International Committee on Marriage and Divorce

1914—In 1914, the International Committee on Marriage and Divorce was organized and incorporated under the laws of New York. They sponsored Federal marriage and divorce legislation and wished to secure the passage and enforcement of a Federal marriage and divorce law, "in order that the present fearful diversity of State laws concerning these subjects shall be replaced by a simple, uniform code, that that shall eliminate, as far as possible, all migratory marriages or elopements, and all fraudulent divorces. * * * By fraudulent divorces we mean that the decree of divorce or annulment of marriage is secured by perjured or purchased testimony, or by connivance and collusion between the parties."[5]

[4]65th Cong., 2d sess. Hearings before House Judiciary Committee on H. J. Res. 187, p. 25.

[5]64th Cong., 1st sess. Hearings before House Judiciary Committee on Uniform Laws as to Marriage and Divorce, H. J. Res. 48.

Third Federal Census

1914—Through the efforts of the International Committee on Marriage and Divorce a third Federal census on marriage and divorce in the United States was authorized by Congress, which resulted in the tabulation of statistics for the single year 1916. (See table on page 187 for subsequent statistics.)

Prohibition of Absolute Divorce

1914—On Feb. 4, 1914, Senator Ransdell, La., Democrat, introduced a resolution (S. J. Res. 109) for a constitutional amendment prohibiting absolute divorce with the right to remarry. The resolution was referred to the Senate Judiciary Committee but never received action.

1915—On Dec. 7, 1915, Representative Edmonds of Pennsylvania introduced a resolution, H. J. Res. 48, for constitutional amendment authorizing Congress to enact marriage and divorce legislation which was referred to the House Judiciary Committee.

Hearings on Edmonds Resolution

1916—On April 12, 1916, the House Judiciary Committee held hearings on H. J. Res. 48. The International Reform Bureau, the National Woman's Christian Temperance Union, the International Committee on Marriage and Divorce, were among the witnesses who testified in favor of the proposed legislation.

1917—On April 12, Mr. Ransdell, La., D., introduced a resolution, S. J. Res. 34, for a constitutional amendment for uniform laws on marriage and divorce, and Mr. Edmonds introduced a similar resolution H. J. Res. 187 in the House on Dec. 13, 1917, which was referred to the House Judiciary Committee. The proposal read: "Congress shall have power to establish and enforce by appropriate legislation uniform laws as to marriage and divorce: Provided that every State may by law exclude, as to its citizens duly domiciled therein any or all causes for absolute divorce in such laws mentioned."

1918—On October 2 the House Judiciary Committee held extended hearings on H. J. Res. 187. No further action was taken.

1919—On May 28, 1919, Mr. Volstead of Minnesota introduced the following resolution, H. J. Res. 75, for a constitutional amendment:

"The Congress may define and limit the causes for divorce from the bonds of matrimony and the conditions under which applications therefor may be granted. Divorces obtained in compliance with the requirements of the Congress shall be valid everywhere. But no divorce shall be granted in any State except under and as authorized by its laws, which may permit or prohibit divorces for any and all the causes therefor defined by the Congress."

On June 9, 1919, Mr. Randall of Wisconsin introduced the following resolution (H. J. Res. 108) for a constitutional amendment:

"Congress shall have power to establish and enforce by appropriate legislation uniform laws as to marriage and divorce: Provided, That every State may by law exclude, as to its citizens duly domiciled therein, any of all causes for absolute divorce in such laws mentioned."

These resolutions were submitted to the House Judiciary Committee.

1920—On Jan. 13, 1920, hearings were held before the House Judiciary Committee on the above resolutions. Witnesses who testified in favor of the resolution included representatives from the Protestant Episcopal Church,

Illinois Vigilance Association, New York State Civic League, and the Commission of Public Morals of the Universalist Church. The resolution received no further action.

The Capper Amendment

1921—On April 19, 1921, Senator Capper, the present leader in the Senate for uniform marriage and divorce laws, introduced his first resolution, S. J. Res. 31, for a constitutional amendment on the subject, which read as follows:

"Congress shall have power to establish and enforce by appropriate legislation uniform laws as to marriage and divorce: Provided, That every State may by law exclude, as to its citizens duly domiciled therein, any or all causes for absolute divorce in such laws mentioned."

On Nov. 1, 1921, the subcommittee of the Senate Committee on the Judiciary held hearings on S. J. Res. 31, at which representatives from many churches and reform organizations testified. Two other resolutions for constitutional amendments were introduced in 1921, but no further action was taken on any of them.

1922—In the summer of 1922 the General Federation of Women's Clubs with the cooperation of the Pictorial Review Magazine began an active campaign to promote a national uniform marriage and divorce law.

Capper Marriage and Divorce Bill

1923—On Jan. 23, 1923, Senator Capper of Kansas introduced a resolution, S. J. Res. 273, in the Senate and Representative Fairfield introduced the companion resolution, H. J. Res. 426, in the House, proposing a constitutional amendment whereby "The Congress shall have power to make laws, which shall be uniform throughout the United States, on marriage and divorce, the legitimation of children and the care and custody of children affected by annulment of marriage or by divorce." This resolution was accompanied by a tentative bill, S. 4394, drafted by Mrs. Edward Franklin White, the legislative chairman of the General Federation of Women's Clubs in America, and endorsed, among others, by the National Federation of Business and Professional Women's Clubs, the Daughters of the American Revolution, National Congress of Mothers and Parent-Teachers Association, and the American Association of Home Economics. The resolutions were referred to the Senate and House Committees respectively but no further action was taken upon them.

On Dec. 5, 1923, the above resolutions now numbered S. J. Res. 5 and H. J. Res. 6, were reintroduced in the 68th Congress by Senator Capper and Representative Fairfield, respectively. Three other resolutions for constitutional amendments on subjects were introduced in 1923, but received no action.

1924—On Jan. 11, 1924, a subcommittee of the Senate Judiciary Committee held hearings on S. J. Res. 5, but the resolution was not reported out.

Resolutions in 69th Congress

1925—In the first session of the 69th Congress, three proposed amendments to the Federal Constitution on the subject of uniform marriage and divorce laws were introduced. On Dec. 7, 1925, Mr. McLeod, Mich., R., introduced his resolution H. J. Res. 30, which read:

"The Congress shall have power to establish uniform laws on the subject of marriage and divorce from the bonds of matrimony throughout the United States."

On Dec. 10, Mr. Taylor, W. Va., D., introduced his resolution H. J. Res. 58, which read:

"Congress shall have power to establish and enforce, by appropriate legislation, uniform laws as to marriage and divorce; provided, that every State may by law exclude as to its citizens duly domiciled therein, any or all causes for absolute divorce in such laws mentioned."

Capper Amendment and Bill in 69th Congress

On Dec. 16, the Capper Marriage and Divorce Amendment was again introduced in the 69th Congress, this time known as S. J. Res. 31, in the Senate, and the companion resolution, H. J. Res. 110, was introduced by Mr. Gibson, Vt., R., in the House.

The Capper amendment is as follows: "The Congress shall have power to make laws, which shall be uniform throughout the United States, on marriage and divorce, the legitimation of children, and the care and custody of children affected by annulment of marriage or by divorce."

This amendment was again accompanied by a tentative bill, S. 1751, to regulate marriage and divorce. The main provisions of this bill as analyzed by Miss Emma Wold, Legislative Secretary of the National Woman's Party in "Equal Rights" were as follows:

1. The requirement of a marriage license for a valid marriage, such marriage to be contracted in the presence of two witnesses, either before a person authorized to celebrate marriages, or in accordance with the customs of any sect to which the parties belong.

2. No license to be issued to a male under 18 or a female under 16, or to an insane person or an imbecile, pauper, epileptic, or a feeble-minded person, or to one afflicted with tuberculosis or a venereal disease, or to persons within certain degrees of blood or marriage relationship, including first cousins.

3. No license to be issued to a male between 18 and 21 or a female between 16 and 18, without the consent of the parents or guardian or the parent having actual custody of the minor, unless the girl is pregnant or has borne a child, or there is no parent or guardian, or other satisfactory facts are shown, when the county judge having probate jurisdiction may make an order allowing the marriage.

4. Application for a marriage license to be made at least two weeks before the license shall be issued, public posting of a notice of such application, and the personal appearance of both parties before the marriage license clerk or a magistrate to state certain facts under oath at least ten days before the issuance of the license.

5. A penalty of a fine or imprisonment in jail, or both, for false swearing to facts required, or for issuance of a license in violation of the act, or for solemnizing a marriage contrary to the provisions of the act, or for failure to record a marriage.

6. Where one party to a marriage has a wife or husband living and the marriage is entered into on the part of one without knowledge of the former marriage, or in good faith in the belief that the former wife or husband was dead or divorced, the dissolution of the former marriage by death or divorce shall render the latter marriage valid if the parties continue to live as husband and wife in good faith, and the children of the marriage shall be considered legitimate.

7. The lawful marriage of the father and mother of an illegitimate child shall fully legitimate it.

Continued on page 209

Efforts to Secure Marriage and Divorce Uniform Law

II. By State Action

1879—The American Bar Association requested its Committee on Law Reforms to report a synopsis of the laws of marriage and divorce in all the States and make recommendations for bringing about more uniformity in such legislation.[1]

1881—As a result of the interest manifested in marriage and divorce laws in the United States the New England Divorce Reform League was organized in Boston. The association became national in character and sponsored uniform marriage and divorce legislation.

1882—The Committee on Law Reforms proposed to the American Bar Association for adoption an "Act to prevent fraudulent divorces." This act was approved by the association, sent to the various state legislatures, and Minnesota adopted it.

1889—The Bar Association appointed a Committee to consider the laws of the different states, relating to "the desirability of uniformity in the laws of the several states, especially those relating to marriage and divorce."[1]

1890—The Legislature of the State of New York adopted an act authorizing the appointment of commissioners for the promotion of uniformity of legislation in the United States, and suggesting that the other states of the Union send representatives to a convention which would draft uniform laws for adoption by the states.

In this year a special committee of the Bar Association reported a resolution recommending the passage of a law in each state and territory providing for the appointment of Commissioners to confer with each other on uniformity in legislation on certain subjects.

1892—In August, 1922, the National Conference of Commissioners on Uniform State Laws met for the first time at Saratoga, N. Y. This conference was attended by commissioners from nine states, but since 1912 all the states, territories, District of Columbia, Porto Rico, and the Philippine Islands have been officially represented.

The annual report of the proceedings of the Conference of 1923 states the following with reference to the nature and scope of the organization:

"In thirty-three of the jurisdictions the Commissioners are appointed by the chief executive acting under express legislative authority. In the other jurisdictions the appointments are made by general executive authority. There are usually three representatives from each jurisdiction. The term of appointment varies, but three years is the usual period. The Commissioners are chosen from the legal profession, being lawyers and judges of standing and experience, and teachers of law in some of the leading law schools. They serve without compensation, and in most instances pay their own expenses. They are united in a permanent organization, under a constitution and by-laws, and annually elect a president, a vice-president, a secretary, and a treasurer. The Commissioners meet in annual conference at the same place as the American Bar Association, usually for four or five days immediately preceding the meeting of that Association. The funds necessary for carrying on the work of the Conference are derived from contributions from some of the states, from appropriations made by the American Bar Association, and contributions from various state bar associations.

"The object of the Conference, as stated in its Constitution, is 'to promote uniformity in state laws on all subjects where uniformity is deemed desirable and practicable.' The Conference works through standing and special committees. In recent years all proposals of subjects for legislation are referred to a standing Committee on Scope and Program. After due investigation, and sometimes a hearing of parties interested, this committee reports whether the subject is one upon which it is desirable and feasible to draft a uniform law."[2]

1905—In January, 1905, the Inter-Church Conference on Marriage and Divorce, met in Washington, and passed a resolution endorsing the "Act on Divorce Procedure," then being recommended by the American Bar Association, for adoption by the States.

In March, 1905, the Legislature of the State of Pennsylvania passed an act [1] authorizing the Governor to appoint citizens learned in the law, to examine and codify the Pennsylvania laws relating to divorce and report to the legislature, and [2] to invite the representatives of the other states in the Union to a conference on the problem of divorce to be held in Washington with a view to the adoption of a uniform law on the problem.

1906—On February 16 the National Divorce Congress, sponsored by the Pennsylvania Legislature and Governor Pennypacker of Pennsylvania met in Washington. The Congress drafted a uniform act as a model for the various states to adopt.

1907—The National Conference of Commissioners on Uniform State Laws, at their 17th annual meeting in Portland, Me., partly adopted the divorce act, drafted by the National Divorce Congress. Up to 1923, three states, Delaware, New Jersey and Wisconsin have enacted this law.

The proposed act adopted grounds of divorce then permitted in many states and included also the granting of a limited divorce; the residence requirement allowed by the Courts was to be two years, and it also provided that a divorce obtained by a spouse in another state for a ground not recognized in the domicile state, shall not be recognized by the latter.

1911-1912—The National Conference of Commissioners on Uniform State Laws approved the "Marriage and Marriage License Act," subsequently enacted in two states, and in 1912, the Marriage Evasion Act was also approved which was enacted in five states.

1924—On Jan. 11, 1924, Mrs. Edward Franklin White, who drafted the Capper Marriage and Divorce Bill (see page ——) stated at the hearings on the Capper bill in the 68th Congress that the proposed federal act itself is the final product of the Conference on Uniform State Laws and the American Bar Association, with some additions and modifications.

1927—In May, 1927, the American Law Institute which met in Washington promulgated among other declarations a restatement of the present law on marriage in the United States.

The Conference of Commissioners on Uniform State Laws and the American Bar Association are still considering a uniform marriage and divorce law for the states, but no further action has been taken.

[1] Report of the New York State Bar Association, 1906.

[2] Commissioners on Uniform State Laws. Proceedings, 1923.

U.S. Census Statistics Showing Marriages and Divorces per 1000 of the Population

Year	Population	MARRIAGES Number	MARRIAGES Per Th. Pop.	DIVORCES Number	DIVORCES Per. Th. Pop.
1925.....	115,378,094	1,182,005	10.2	175,449	1.51
1924.....	113,727,432	1,178,318	10.4	170,952	1.50
1923.....	111,693,474	1,223,924	11.0	165,096	1.48
1922.....	109,893,003	1,129,045	10.3	148,815	1.35
1916.....	97,471,043	1,040,684	10.7	112,036	1.13
1906.....	81,458,750	853,079	10.5	72,062	0.86
1905.....	80,085,511	804,016	10.0	67,976	0.82
1904.....	78,727,805	780,856	9.9	66,199	0.81
1903.....	77,455,534	785,926	10.1	64,925	0.81
1902.....	76,183,191	746,364	9.8	61,480	0.78
1901.....	74,843,971	716,287	9.6	60,984	0.79
1900.....	73,539,779	685,101	9.3	55,751	0.73
1899.....	72,303,090	650,585	9.0	51,437	0.69

Year	Population	MARRIAGES Number	MARRIAGES Per Th. Pop.	DIVORCES Number	DIVORCES Per. Th. Pop.
1898.....	70,985,186	625,253	8.8	47,849	0.65
1897.....	69,772,335	622,112	8.9	44,699	0.62
1896.....	68,485,189	613,719	9.0	42,937	0.61
1895.....	67,110,923	598,633	8.9	40,387	0.58
1894.....	65,765,975	565,798	8.6	37,568	0.55
1893.....	64,471,119	578,457	9.0	37,468	0.56
1892.....	63,115,603	577,335	9.1	36,579	0.56
1891.....	61,131,603	562,004	9.2	35,540	0.55
1890.....	59,941,396	542,307	9.0	33,461	0.53
1889.....	58,256,373	530,937	9.1	31,735	0.52
1888.....	57,007,689	504,373	8.8	28,669	0.48
1887.....	55,667,252	482,680	8.7	27,919	0.47

States Which Have Adopted Uniform Marriage and Divorce Laws[1]

Alabama

Desertion and Non-Support Act. Adopted in 1915.

Delaware

Desertion and Non-Support Act* (1913); Divorce Procedure Act of 1901; and Annulment of Marriage and Divorce Act (1907).

Illinois

Desertion and Non-Support Act* (1915); Marriage Evasion Act (1915).

Kansas

Desertion and Non-Support Act (1911).

Louisiana

Divorce Statistics Act (1913); Marriage Evasion Act 1914; Marriage Statistics Act (1908).

Massachusetts

Desertion and Non-Support Act* (1911); Marriage and Marriage License Act* (1911); Marriage Evasion Act* (1913).

Mississippi

Desertion and Non-Support Act (1920).

Nevada

Desertion and Non-Support Act (1923).

North Dakota

Desertion and Non-Support Act (1911).

New Jersey

Annulment of Marriage and Divorce Act of 1907 (1907); Desertion and Non-Support Act* (1917).

Texas

Desertion and Non-Support Act (1913).

Utah

Desertion and Non-Support Act (1915).

Vermont

Desertion and Non-Support Act (1915); Marriage Evasion Act (1912).

Virginia

Desertion and Non-Support Act* (1915).

West Virginia

Desertion and Non-Support Act (1917).

Wisconsin

Desertion and Non-Support Act (1911); Marriage and Marriage License Act (1917); Marriage Evasion Act (1915); Migratory Divorce Act of 1901; Divorce Procedure Act of 1901; Annulment of Marriage and Divorce Act of 1907 (1909).

Wyoming

Desertion and Non-Support Act (1915).

Uniform Laws[1] on Other Subjects Adopted by the States

	Year of Approval	States Enacting
Acknowledgment Act	1892	9
Acknowledgments Act, Foreign.....	1914	7
Aeronautics Act	1922	8
Bills of Lading Act	1909	26
Child Labor Act	1911	4
Cold Storage Act	1914	6
Conditional Sales Act.....	1918	8
Declaratory Judgments Act	1922	5
Desertion and Non-Support Act....	1910	18
Extradition of Unsound Persons....	1916	8
Fiduciaries Act	1922	5
Flag Act	1917	9
Foreign Depositions Act	1920	10
Fraudulent Conveyance Act	1918	11
Illegitimacy Act	1922	4
Industrial Accident Reports Act....	1914	—
Land Registration Act	1916	3
Limited Partnership Act	1916	13
Negotiable Instruments Act	1896	51
Occupational Diseases Act	1920	—
Partnership Act	1914	16
Proof of Status Act	1920	7
Pure Food Law.....	1909	2
Sales Act	1906	27
Sales Act Amendments	1922	2
Stock Transfer Act	1909	17
Vital Statistics Act	1920	1
Warehouse Receipts Act	1906	48
Warehouse Receipts Act Amdts.....	1922	4
Wills Act, Foreign Executed	1910	7
Wills Act, Foreign Probated.....	1915	4
Workmen's Compensation Act	1914	2

[1]Laws approved by the National Conference of Commissioners on Uniform State Laws. See Annual Report, 1923.

*The Uniform Act was adopted with some modifications.

The Question of a Divorce Law for Canada

By the Hon. Mr. Justice A. Rives Hall
Puisne Judge of the Court of King's Bench for the Province of Quebec, Montreal

A REVIEW of the question of divorce in the Dominion of Canada must necessarily be prefaced by a brief indication of English law and practice, for, although the British North America Act has empowered the Federal Parliament to make laws concerning marriage and divorce, that authority has neven been invoked for any general law, and the only substantive law applied to such cases, either in the Provincial Divorce Courts, or before the Senate Committee, is the English law.

The Common Law of England, which follows in this case the Common Law of the Church, "deemed so highly and with such mysterious reverence of the nuptial tie that the causes of divorce are purposely limited to a few extreme and specific provocations."

The consideration of such cases originally came within the exclusive jurisdiction of the Ecclesiastical Courts, which could first decree a divorce a mensa et thoro, a judicial separation, which did not, however, dissolve the marriage tie; or, secondly, pronounce a sentence of nullity, declaring that the show or form of marriage had between the parties was null and void from the beginning—that no legal tie ever existed. The Ecclesiastical Courts, however, had no authority to dissolve a marriage good in itself, whatever might be the delinquency of the parties. The sentences pronounced were improperly termed sentences of divorce a vinculo matrimonii, for in the cases to which alone such sentences were applicable, there was in fact, in the eye of the law, no legal vinculum or binding tie of any kind.

Strictly speaking, therefore, there was no absolute divorce; by the law of England the contract of marriage was indissoluble, and when once it had been constituted in a legal manner there were no means of putting an end to it in any of the courts. Nevertheless, the actual dissolution of such a contract, when adultery had been committed, was so consonant to reason and religion, that where the general law failed to give a remedy, Parliament stepped in to provide one specially by passing a particular law in favour of those who could make out a case which would warrant its interference.

Two conditions were in general necessary to satisfy Parliament:

First, a divorce a mensa et thoro had to be obtained from the Ecclesiastical Court. Second, an action for damages had to be brought against the adulterer in the Civil Court for criminal conversation. The latter was not absolutely necessary, and appears to have been regarded as a safeguard against divorce being granted to persons who had connived at the acts of adultery, or had themselves been guilty of misconduct in the marriage state. By this characteristic evasion, the law of England completely changed its practice while still maintaining its ancient theory of divorce. Probably the anomalous character of the remedy might have brought about a change but for the great practical evil of the expense attending the proceedings. Three suits—ecclesiastical, civil, and parliamentary—were necessary. Divorce became a remedy for the rich. The poor were driven to bigamy. Yet it was not until 1857—and then not without determined resistance—that this disgraceful state of things was changed by the passing of the Act under which was established the Court of Divorce and Matrimonial Causes, the proceedings before which have now, with few exceptions, the same object and result as the former proceedings in Parliament and in the Civil and Ecclesiastical Courts. The action for damages for crim. con. is represented by the adulterer being made a party to the husband's suit. Full divorce is granted on the principles usually recognized by the House of Lords; and the other remedies are such as might formerly have been granted by the Ecclesiastical Court.

Lord Buckmaster, in a communication to The Times gave specific instances of the anomalies and abuses that still prevail. The wife of an insane murderer remains his wife. He is incarcerated in a criminal asylum without prospect of release. She is told by the Courts that she is a married woman and even in such circumstances must remain irrevocably married in the sight of the law; and the social world, with expressions of pity, shuts its eyes to the consequences. Infection by syphilis is no ground for divorce. Bigamy, which is extremely common, is not sufficient ground for divorce, it must be "bigamy with adultery."

This law of divorce with all its anomalies, inequalities and injustice, is the only substantive law that exists in Canada. It is applied in all the provinces except Ontario and Quebec. The only grounds for divorce are those provided by the English Act.

The jurisdiction of the provincial courts is, however, supplemented by the Parliamentary Divorce granted by the Senate at Ottawa, to which the residents of Ontario and Quebec have access as well, and as Parliament has enacted no substantive law, has not enumerated any special grounds for divorce, the Senate has asserted the right of examining each case on its merits, and, while giving every consideration to the English jurisprudence, holds itself entitled to bring to bear on the question modern ideas and standards. Parliment is not, therefore, bound by the narrow limits of the English law, and does recognize other grounds of divorce than those established by the Divorce and Matrimonial Causes Act. There are, therefore, in Canada, two jurisdictions, before which questions of divorce may be brought.

The British North America Act, 1867, conferred upon the Parliament of Canada the power to make laws for the peace, order and good government of Canada in relation to marriage and divorce, and the provincial tribunals in certain provinces are still permitted to continue a jurisdiction in matters of divorce which was conferred upon them prior to Confederation, or, in the case of provinces admitted later, acquired by the general terms of their characters.

In the first category are found the provinces of Nova Scotia, New Brunswick and Prince Edward Island, all of which had, by their provincial legislatures, established courts of marriage and divorce. British Columbia stands in a somewhat different position, in that, while no special court was established, jurisdiction has been assumed by the Supreme Court of the province under the Ordinance that enacted that the civil and criminal laws of England as the same existed on the 19th November, 1858, should be in force in all parts of the province.

This was affirmed in the case of S. vs. S. (1. B. C. L. R., p. 23), and while there was in that case the weighty dissenting opinion of Chief Justice (Sir Matthew Begbie) the Court has since repeatedly followed the precedent.

The Privy Council later gave the seal of its approval to this ruling and declared that the Supreme Court of British Columbia has jurisdiction to entertain a petition for divorce between persons domiciled in that colony in respect of matrimonial offences alleged to have been committed therein (Watts vs. Watts, A. C. 1908, p. 573).

Manitoba, Saskatchewan and Alberta, as part of the old Northwest Territory, enjoyed the laws of England as they stood on the 15th July, 1870, and, therefore, they had the English law of divorce, under the Divorce and Matrimonial Causes Act 1857.

It is interesting to note, however, that for many years this right was ignored, petitions for Parliamentary Divorce were frequently presented, and it was not until the year 1919 that the jurisdiction of the provincial courts was finally admitted.

The provinces of Quebec and Ontario are, therefore, the only parts of Canada that have no divorce other than the Parlimentary Divorce granted by the Federal Parliament. At the time Upper Canada, now Ontario, adopted the English law relative to property and civil rights, in 1792, no power to dissolve marriage was vested in the courts in England, and the provincial legislature never conferred it, although the provincial courts are competent to deal with the validity of a marriage contract on the ground of its being a civil contract, and, in cases of fraud, mistake, duress and lunacy, declare it void.

In the province of Quebec marriage is declared indissoluble, and, while the provincial courts have jurisdiction to annul a marriage for impotency existing at the time of the marriage, and for causes that would invalidate any civil contract, there is no jurisdiction for divorce. The right of either consort to sue for separation from bed and board, corresponding to the divorce a mensa et thoro of the English Ecclesiastical Courts is well recognized. In the text of the Code, and under the earlier jurisprudence, a wife might demand separation on the ground of the husband's adultery only when he kept his concubine in the common habitation, but in modern practice a less biased view is taken, and as the husband's misconduct in certain circumstances is interpreted as outrage, ill usage or grievous insult, separation may be granted.

While the provinces that have followed the English law have their own courts for the hearing of applications for divorce, it is generally recognized that they may, with the provinces of Quebec and Ontario, avail themselves of the wider advantages of a petition to the Senate at Ottawa. The procedure followed in what is known as "Parliamentary Divorce" has been adapted from that which prevailed in England prior to 1858.

It is to be noted, however, that Parliamentary Divorce in Canada is a very different thing from the Parliamentary Divorce that was formerly applied in England.

The Senate has followed the example of the House of Lords in appointing a committee to investigate the facts, but it has entirely dispensed with the other essential—that of the record of a prior suit before a competent court. The assumption of jurisdiction, therefore, by the Senate of Canada under the British North America Act, has been criticised as a usurpation, it being contended that the passing of an individual act is not the adoption of a law. The authority of the Parliament of Canada in reference to divorce is confined to making a general law for the peace and order and good government of Canada, and it has been argued that dissolving marriage contracts one by one is not making a law, more particularly as there is no law available to the Dominion of Canada or the Parliament of Canada upon which it can act, or proceed to thus break the civil contract of marriage. Whether or no this be too narrow and strict an interpretation, Parliament has administered divorce since Confederation and, although it is undoubtedly eminently desirable that some general law of divorce should be adopted, there is little probability of the present jurisdiction being abrogated or curtailed until some general law had been introduced.

While it is apparent, therefore, that there is an urgent need in Canada for a general law of divorce, the reluctance of the Federal Parliament to draft legislation is explained by the opposition of the province of Quebec to any formal recognition of divorce. Under the present system, however, the residents of Quebec, whether Catholic or Protestant, are free to take advantage of the provisions for a Parliamentary Divorce, and the Ecclesiastical authorities can restrain such action only by their spiritual authority. The Church is fully within its rights in exercising its authority over its own adherents, but that authority should not be the cause of depriving other citizens of an opportunity to secure release, in simple and effective manner, from ties which are irksome and dishonouring.

The late Sir George Cartier, in explaining the matter, said that at the time of the formation of the Confederation, the question of divorce had been left purposely to be decided by the Federal Parliament, which had a Protestant majority, and taken away from the Legislature of Quebec, the majority of which were Catholic, because it was against the creed and conscience of Catholics to vote for divorce in any circumstances whatever. This was done in order that justice might be done to Protestants. The Catholic Bishops of Canada, knowing that the inhabitants of Canada formed a mixed community, approved of this course.

A Federal law of divorce would not deprive the Church of its spiritual authority, and to orthodox and devout Catholics a resort to the courts would be no more permissible than is now a resort to Parliament.

A Federal law of divorce would, therefore, in no sense be an invasion of the rights of the Church. The excessive cost of a Parliamentary Divorce deprives the unfortunate poor of a right that should be equally available to all, and makes divorce a rich man's privilege.

One of the unfortunate results of this condition of affairs is that many persons who find it impossible to secure divorce in Canada take advantage of the proximity of the United States, where many jurisdictions have so lax a system that divorce is encouraged and made easy. The law of Canada, even that of the province of Quebec (Mignault 1, p. 551) recognizes the validity of a divorce secured in a foreign jurisdiction when the parties have acquired a valid domicile therein, but it too often happens that the domicile recognized by individual states is a mere subterfuge, many divorces are secured by Canadians, the validity of which may be seriously questioned, and in several cases Parliament has refused to recognize an American divorce as valid and conclusive in Canada.—*Extracts, see 9, p. 214.*

Synopsis of State Laws on Marriage and Divorce

Source:—Frank H. Keezer, A Treatise on the Law of Marriage and Divorce, 1923.

Note: The provisions listed below relate to absolute not partial divorce.

Alabama

Marriage Age Limit—Males, 17; females, 14. Marriage annulled under this age.
Marriages Prohibited—Incestuous,[1] fraudulent; inter-racial.
Common Law Marriage[2]—Valid.
Residence for divorce—If non-resident, 1 year, except for divorce because of abandonment which is 3 years.
Grounds for divorce—Adultery; crime; abandonment for 2 years; habitual drunkenness; impotency at marriage; violent cruelty; insanity for 20 years after marriage; when wife has lived apart from husband for 5 years.
Remarriage—Not within 60 days or during pendency of appeal.

Alaska

Marriage Age Limit—Males, 21; females, 18.
Marriages Prohibited—Incestuous; bigamous; fraudulent.
Common Law Marriage—Valid.
Residence for divorce—3 years.
Grounds for divorce—Adultery; cruelty; desertion for 2 years; drunkenness; impotency.
Remarriage—Not allowed until appeal is determined.

Arizona

Marriage Age Limit—Males, 18; females, 16. Parental consent required for males under 21, females under 18.
Marriages Proh.—Incestuous; inter-racial; bigamous; fraudulent.
Common Law Marriage—Not recognized.
Residence for divorce—1 year in state and 6 months in county.
Grounds for divorce—Adultery; crime; cruelty; desertion for 1 year; impotency; non-support; drunkenness.
Remarriage—Permitted after 1 year.

Arkansas

Marriage Age Limit—Males, 17; females, 14. Parental consent required for males under 21 and females under 18.
Marriages Proh.—Incestuous; inter-racial; fraudulent.
Common Law Marriage—Not valid.
Residence for divorce—Residence for 1 year; cause for divorce must have existed in the state or if out of state that it was cause for divorce in state where it occurred, or plaintiff's residence was then in the state.
Grounds for divorce—Adultery; conviction for felony; cruelty; drunkenness; bigamy; impotency.
Remarriage—Permitted.

California

Marriage Age Limit—Males, 21; females, 18. Parental consent for male 18 and female 16.
Marriages Prohibited—Inter-racial; fraudulent; bigamous; insane.
Common Law Marriage—Not recognized.
Residence for divorce—1 year in state, 3 months in county.
Grounds for divorce—Adultery; felony; extreme cruelty; desertion for 1 year; habitual drunkenness.
Remarriage—Permitted after 1 year.

[1]Between near relatives.

[2]An agreement made public between a man and woman to enter into the marriage relation without ecclesiastical or civil ceremony.

Colorado

Marriage Age Limit—Males, 21 years; females, 18 years. If under these ages, criminal, unless with consent of parents.
Marriages Proh.—Incestuous; bigamous; between negroes and whites; insanity and within 1 year after divorce.
Common Law Marriage—Valid.
Residence for divorce—1 year unless act committed in state.
Grounds for divorce—Adultery; felony; extreme cruelty; mental suffering; desertion for 1 year; habitual drunkenness; bigamy; impotency.
Remarriage—After 1 year.

Connecticut

Marriage Age Limit—Males, 21 and females, 21. Parental consent if under these ages; Selectmen's consent if under 16.
Marriages Proh.—Incestuous; fraudulent; bigamous; insane; epileptic.
Common Law Marriage—Not recognized.
Residence for divorce—3 years unless cause for divorce arose in state, or for drunkenness and cruelty when residence is sufficient.
Grounds for divorce—Adultery; prison sentence for crime; cruelty; desertion for 3 years, absence for 7 years; fraudulent marriage.
Remarriage—Permitted after final decree.

Delaware

Marriage Age Limit—Males, 18; females, 16; unless with consent of parent or guardian or if confirmed on reaching age limit.
Marriages Proh.—Incestuous; bigamous; whites with negroes; between paupers; epileptic; insane; between those having communicable diseases; drug addicts; a marriage of divorced persons unless certain requirements are met.
Common Law Marriage—Valid.
Residence for divorce—2 years bona fide residence unless for adultery and bigamy when committed in state. If cause is not in state, must be ground for divorce in state where committed.
Grounds for divorce—Adultery; crime; cruelty; desertion for 3 years; drunkenness; fraud or impotency at time of marriage.
Remarriage—Allowed, but not between adulterer and co-respondent.

District of Columbia

Marriage Age Limit—Males, 21; females, 18; parental consent if under; void if below 16 for male and 14 for female.
Marriages Prohibited—Incestuous; bigamous.
Common Law Marriage—Not prohibited by statute.
Residence for divorce—3 years.
Grounds for divorce—Adultery.
Remarriage—Innocent party only can remarry.

Florida

Marriage Age Limit—Males, 21; females, 21; parental consent if under; void if under 14 for male and 12 for female.

Marriages Proh.—Incestuous; bigamous; whites with negroes.
Common Law Marriage—Recognized.
Residence for divorce—2 years unless where adultery committed in state, when residence only necessary.
Grounds for divorce—Adultery; extreme cruelty; violent temper; desertion for 1 year; drunkenness; impotency; bigamy; where divorce is obtained in another state or county.

Georgia

Marriage Age Limit—Males, 17 years; females, 14 years. Parental consent for females under 18.
Marriages Prohibited—Incestuous; between whites and negroes; bigamous.
Common Law Marriages—Recognized.
Grounds for divorce—Insanity and impotency at marriage; adultery; desertion for 3 years, conviction for crime; cruelty.
Residence for divorce—1 year.
Remarriage—Absence for 5 years. Jury determines rights and disabilities of parties in divorce.

Idaho

Marriage Age Limit—Males and females, 18 years; parental consent if under.
Marriages Prohibited—Incestuous; between first cousins; whites with negroes or mongolians; bigamous.
Common Law Marriages—Recognized.
Grounds for divorce—Adultery; extreme cruelty; desertion for 1 year; drunkenness; conviction of felony; after 6 years of insanity.
Residence for divorce—1 year in state and 6 months in county.
Remarriage—Permitted.

Illinois

Marriage Age Limit—Males, 18; females, 16. Parental consent for males under 21 and females under 18.
Marriages Prohibited—Incestuous; first cousins; bigamous.
Common Law Marriages—Not recognized.
Grounds for divorce—Impotency; bigamy; desertion for 2 years; drunkenness; cruelty; crime.
Residence for divorce—1 year unless offense committed in state.
Remarriage—After 1 year from decree; in case of adultery, 2 years. Violation punishable with penitentiary sentence and marriage is declared void.

Indian Territory

Marriage Age Limit—Males, 17 years; females, 14 years.
Marriages Prohibited—Incestuous, including first cousins; between whites and negroes; insane; fraudulent.
Grounds for divorce—Adultery; crime; drunkenness; cruelty; desertion for 1 year; impotency; insanity.
Residence for divorce—1 year.

Indiana

Marriage Age Limit—Males, 18; females, 16 years.
Marriages Prohibited—Those nearer than second cousins; between whites and one-eighth negroes; marriages out of state to evade statutes; insanity.
Common Law Marriages—Recognized.
Grounds for divorce—Adultery, except where connivance is committed; impotency at marriage; desertion for 2 years; cruelty; drunkenness; crime before marriage.
Residence for divorce—2 years in state, 6 months in county.
Remarriage—If decree was granted by default, not within 2 years and party against whom decree was rendered may reopen case within that time.

Iowa

Marriage Age Limit—Males, 16 years; females, 14 years.
Marriages Prohibited—Incestuous, including cousins; between insane.
Common Law Marriages—Recognized.
Grounds for divorce—Adultery; desertion for 2 years; crime; drunkenness; cruelty.
Residence for divorce—1 year except when defendant is resident and process was served by personal service.
Remarriage—Not within 1 year after divorce, punishable as a misdemeanor.

Kansas

Marriage Age Limit—Males, 15; females, 12 years. Consent of probate judge required if below 17 for male and 15 for female.
Marriages Prohibited—Incestuous, including first cousins; epileptics; insane.
Common Law Marriage—Recognized but those contracting them subject to a fine or imprisonment.
Grounds for divorce—Adultery; abandonment for 1 year; impotency; cruelty; drunkenness; felony.
Residence for divorce—1 year.
Remarriage—After 6 months after decree; 30 days after final judgment on appeal.

Kentucky

Marriage Age Limit—Males, 14; females, 12.
Marriage Prohibited—Incestuous; whites with negroes; insane; fraudulent.
Common Law Marriage—Not recognized.
Grounds for divorce—Adultery; impotency; abandonment for one year; felony; communicable disease; cruelty; drunkenness.
Residence for divorce—1 year, if cause of complaint committed out of state, must be a cause of divorce in that state.
Remarriage—Permitted (one divorce only except for adultery). After divorces granted to both husband and wife.

Process can be served personally on defendant, or by warning order 60 days before term day.

Louisiana

Marriage Age Limit—Males, 14 years; females, 12 years.
Marriages Prohibited—Incestuous; between whites and persons of color.
Common Law Marriage—Not recognized.
Grounds for divorce—Adultery; crime; drunkenness; cruelty; separation for 7 years.
Residence for divorce—If marriage was in state, wife may bring action regardless of domicile of husband.
Remarriage—Allowed except with paramour. Wife may not remarry within 10 months of final decree.

In this state process may be served personally; by leaving summons at last known residence; or upon a person appointed by the court.

Maine

Marriage Age Limit—Males, 21; females, 18 years; under these parental consent required.
Marriages Prohibited—Incestuous; town paupers.
Common Law Marriages—Probably not recognized.
Grounds for divorce—Adultery; cruelty; impotency; desertion for 3 years; intoxication; neglect of duty.

Residence for divorce—1 year, unless plaintiff resided in state when offense occurred or parties were married in the state.
Remarriage—Neither party may remarry.

Maryland

Marriage Age Limit—Males, 21 years; females, 18 years; under these consent of parents required.
Marriages Prohibited—Incestuous; between whites and negroes.
Common Law Marriages—Technically not recognized, but practically they are.
Grounds for divorce—Adultery; abandonment for 3 years; impotency at marriage.
Residence for divorce—2 years.
Remarriage—Not forbidden.

Massachusetts

Marriage Age Limit—Males, 14 years; females, 12 years; consent of parents required for male under 21 and female under 18 years.
Marriages Prohibited—Incestuous; marriages out of state to evade law; marriage in state if done to evade laws of resident state.
Common Law Marriages—Not recognized.
Grounds for divorce—Adultery; impotency; desertion for 3 years; drunkenness; cruel and abusive treatment; crime.
Residence for divorce—Must have lived together in state at some time; one of parties must have lived in state when cause occurred.
Remarriage—Party from whom divorce was granted shall not marry within 2 years after decree.

Michigan

Marriage Age Limit—Males, 18 years; females, 16 years.
Marriages Prohibited—Incestuous, including first cousins; bigamous; insane; persons having venereal disease.
Common Law Marriages—Recognized.
Grounds for divorce—Adultery; impotency; drunkenness; desertion for 2 years; cruelty; sentence for imprisonment for 3 years; failure to support.
Residence for divorce—1 year for cause which arose in state, 2 years if cause arose elsewhere.
Remarriage—In discretion of court but not to exceed 2 years.

Minnesota

Marriage Age Limit—Males, 18 years; females, 15 years.
Marriages Prohibited—Relatives nearer than first cousins; epileptics; insane; and marriages performed within 6 months after a divorce.
Common Law Marriages—Recognized.
Grounds for divorce—Adultery; impotency; cruelty; conviction of crime; desertion for 1 year; habitual drunkenness.
Residence for divorce—1 year, except for adultery.
Remarriage—After 6 months.

Mississippi

Marriage Age Limit—Males, 21 years; females, 18 years; under these consent of parents necessary.
Marriages Prohibited—Incestuous, including first cousins; between whites with negroes or Mongolians of one-eighth blood.
Common Law Marriage—Recognized.
Grounds for divorce—Adultery; conviction to penitentiary; cruelty; desertion for 2 years; drunkenness; impotency; insanity.
Residence for divorce—1 year unless both parties domiciled in state or personal service made on defendant in state.
Remarriage—Discretion of court, if divorce granted for adultery.

Missouri

Marriage Age Limit—Males, 21; females, 18 years; under these consent of parents required.
Marriage Prohibited—Incestuous, including first cousins; between whites with negroes or Mongolians; insane; epileptic.
Common Law Marriages—Not recognized.
Grounds for divorce—Adultery; impotency at marriage; absence for 1 year without cause; conviction for crime; habitual drunkenness; cruelty.
Residence for divorce—1 year, unless acts committed in state, or while one party resided in state.
Remarriage—Not prohibited by statute.

Montana

Marriage Age Limit—Males, 18 years; females, 16 years.
Marriage Prohibited—Incestuous, including first cousins; feeble-minded; forced.
Common Law Marriages—Recognized.
Grounds for divorce—Adultery; conviction of felony; cruelty; desertion and neglect for 1 year; drunkenness.
Residence for divorce—1 year.
Remarriage—Permitted.

Nebraska

Marriage Age Limit—Males, 18 years; females, 16 years.
Marriage Prohibited—Incestuous, including first cousins of whole blood; whites with negroes or Mongolians.
Common Law Marriages—Recognized.
Grounds for divorce—Adultery; impotency at marriage; imprisonment for crime; abandonment for 2 years, drunkenness; cruelty.
Residence for divorce—1 year, unless marriage took place in state and plaintiff has continued to live in state; for cause arising out of state, 2 years residence required.
Remarriage—After 6 months.

Nevada

Marriage Age Limit—Males, 18 years; females, 16 years; such marriages may be confirmed in arriving at prescribed age.
Marriage Prohibited—Incestuous, including first cousins; between whites with negroes, Mongolians or Indians.
Common Law Marriages—Recognized.
Grounds for divorce—Adultery; crime; cruelty; desertion or neglect for 1 year; drunkenness; impotency at marriage.
Residence for divorce—6 months.
Remarriage—Permitted.

New Hampshire

Marriage Age Limits—Males, 14; females, 13. Parental consent required for males under 18 and females under 16.
Marriages Prohibited—Incestuous, including first cousins; epileptics; insane; feeble-minded; those with venereal diseases, etc.
Common Law Marriages—Recognized under certain circumstances.
Grounds for divorce—Impotency; cruelty; cruel treatment; crime; adultery; habitual drunkenness; absence; abandonment; desertion for 3 years; when wife leaves state and remained absent from husband for 10 years without claiming her marriage rights, husband may obtain

divorce; when wife of citizen or alien of another state has lived in state for 3 years and husband has left U. S. with intention of becoming a foreign citizen and has not supported wife, wife may obtain divorce.
Residence for divorce—1 year.
Remarriage—Not forbidden.

New Jersey

Marriage Age Limits—Males, 21; females, 18; below these ages consent of parents required.
Marriages Prohibited—Incestuous; bigamous; epileptics; insane; feeble-minded.
Common Law Marriages—Recognized.
Grounds for divorce—Adultery; desertion for 2 years.
Residence for divorce—2 years' residence except in action for adultery.
Remarriage—Not forbidden.

New Mexico

Marriage Age Limits—Males, 18; females, 15 years.
Marriages Prohibited—Incestuous.
Common Law Marriages—Probably not legal but no decision had.
Grounds for divorce—Adultery; impotency; cruelty; abandonment; crime; drunkenness; neglect.
Residence for divorce—1 year.
Remarriages—Not forbidden.

New York

Marriage Age Limits—Males and females, 18 years.
Marriages Prohibited—Incestuous; marriages of persons divorced in the state for his or her fault during the life of the other, or until consent of court after 3 years are prohibited.
Common Law Marriages—Recognized.
Grounds for divorce—Adultery.
Residence for divorce—Divorce is granted for adultery only when both parties were residents; when plaintiff was resident at time offense was committed and action was commenced; actual inhabitancy of the state by the wife makes her a resident for the purpose of the action.
Remarriage—Defendant after 3 years with permission of court.

North Carolina

Marriage Age Limits—Males, 16; females, 14. Under age of 18, consent of parents or guardian required.
Marriages Prohibited—Bigamous; incestuous; between whites and negroes, or Indians to third generation.
Common Law Marriages—Not recognized.
Grounds for divorce—Adultery; impotency; separation for 5 years and plaintiff has resided in state during that period.
Residence for divorce—Bona fide residence for 2 years.
Remarriage—Permitted unless restrained by law.

North Dakota

Marriage Age Limits—Males, 18; females, 15. Parental consent required for males under 21 and females under 15.
Marriages Prohibited—Incestuous, including first cousins; between whites and negroes.
Grounds for divorce—Adultery; cruelty; grievous mental suffering; desertion; neglect; intemperance for 1 year; insanity for 5 years.
Residence for divorce—Bona fide residence for 1 year and plaintiff must also be a citizen of U. S. or declared his intention to be a citizen.
Remarriage—Permitted under the orders of the court.

Ohio

Marriage Age Limits—Males, 18; females, 16 years; parental consent required for males under 21 and females under 18 not previously married.
Marriages Prohibited—Incestuous, including first cousins; bigamous.
Common Law Marriages—Recognized.
Grounds for divorce—Absence for 3 years; adultery; impotency; cruelty; fraud; neglect; habitual drunkenness; imprisonment for crime; the procurement of a divorce by a husband or wife.
Remarriage—Not forbidden.

Oklahoma

Marriage Age Limits—Males, 18; females, 15; parental consent required for males under 21 and females under 18.
Marriages Prohibited—Incestuous, including first and second cousins; marriages within 6 months of a divorce; between whites and negroes; under age of consent; marriage without license; by persons infected with venereal disease.
Common Law Marriages—Recognized.
Grounds for divorce—Abandonment for 1 year; adultery; impotency; extreme cruelty; fraud; drunkenness; neglect; conviction of felony.
Residence for divorce—1 year in state and county.
Remarriage—After 6 months from decree except on appeal then not within 30 days after final judgment.

Oregon

Marriage Age Limits—Males, 18; females, 15; parental consent for males under 21 and females under 18.
Marriages Prohibited—Incestuous, including first cousins; bigamous; between whites with negroes or Mongolians.
Common Law Marriages—Not Recognized.
Grounds for divorce—Adultery; impotency; conviction of felony; habitual drunkenness; desertion for 1 year; cruelty.
Residence for divorce—1 year.
Remarriage—Prohibited within 6 months.

Pennsylvania

Marriage Age Limits—Males and females, 21 years; under these parental consent required.
Marriages Prohibited—Incestuous, including first cousins.
Common Law Marriages—Recognized.
Grounds for divorce—Adultery; desertion for 2 years; personal abuse; conduct which makes life burdensome; conviction for crime where sentence exceeds 2 years; hopeless insanity.
Residence for divorce—1 year.
Remarriage—Permitted except with co-respondent.

Rhode Island

Marriage Age Limits—Males and females, 21; under these consent of parents required.
Marriages Prohibited—Incestuous.
Common Law Marriages—Recognized.
Grounds for divorce—Adultery; cruelty; impotency; desertion for five years or shorter period in discretion of court; drunkenness; use of drugs; refusal to support for 1 year; gross misbehavior repugnant to the marriage covenant.
Residence for divorce—2 years.
Remarriage—After final decree, but no final decree shall be granted until 6 months after trial and decision.

South Carolina

Marriage Age Limits—No license issued to males under 18 or females under 14; parental consent for male or female under 18.
Marriages Prohibited—Incestuous; whites with Indians, negroes, etc.; marriages of idiots and lunatics.
Common Law Marriages—Recognized.
Grounds for divorce—Divorces not allowed. Marriages annulled for idiocy; consanguinity; want of consent; when contract not genuine; when bigamous.

South Dakota

Marriage Age limits—Males, 18; females, 14.
Marriages Prohibited—Incestuous, including first cousins; bigamous and miscegenetic marriages are void.
Common Law Marriages—Recognized.
Grounds for divorce—Adultery; conviction of felony; cruelty; desertion; neglect; intemperance for 1 year.
Residence for divorce—1 year; where cause arose in state, 6 months; where parties married in state and continued to live in state action may be brought at any time.
Remarriage—Plaintiff may at any time; party guilty of adultery may remarry plaintiff.

Tennessee

Marriage Age Limits—Males, 14; females, 12; parental consent required by either under 18.
Marriages Prohibited—Incestuous; whites with negroes; bigamous except after other spouse is absent from state 5 years.
Common Law Marriages—Recognized to establish civil liability only.
Grounds for divorce—Cruel and inhuman treatment; adultery; conviction of crime; desertion for 2 years; habitual drunkenness; absence for 5 years; impotency; insanity.
Residence for divorce—2 years.
Remarriage—Permitted, but defendant guilty of adultery may not marry co-respondent during life of plaintiff.

Texas

Marriage Age Limits—Males, 16; females, 14 years.
Marriages Prohibited—Incestuous; whites with colored.
Common Law Marriages—Recognized.
Grounds for divorce—Conviction of felony; outrageous cruelty; abandonment for 3 years; where parties have lived apart for 10 years; where wife commits adultery or husband is living in adultery.
Residence for divorce—6 months in county, 1 year in state.
Remarriage—Permitted, but not within 1 year when divorce was granted for cruel treatment.

Utah

Marriage Age Limits—Males, 16; females, 14; parental consent required for males under 21 and females under 18.
Marriages Prohibited—Incestuous; bigamous; between whites and negroes or Mongolians; between lunatics or persons afflicted with venereal diseases; when male is under 16 and female under 14; marriages of divorced persons before final judgment in case of appeal.
Common Law Marriages—Not recognized.
Grounds for divorce—Impotency at marriage; adultery after marriage; desertion for 1 year; neglect to support; drunkenness; cruelty; conviction of felony; mental distress; insanity.
Residence for divorce—1 year.
Remarriage—Not forbidden by statute.

Vermont

Marriage Age Limits—Males, 21; females, 18; under these consent of parents required.
Marriages Prohibited—Incestuous; of persons infected with venereal disease.
Common Law Marriages—Not recognized.
Grounds for divorce—Adultery; conviction of felony; intolerable severity; absence for 7 years; desertion for 3 years; neglect.
Residence for divorce—2 years in state, 6 months in county.
Remarriage—Not permitted by defendant within 3 years except after death of plaintiff.

Virginia

Marriage Age Limits—Males, 14 years; females, 12 years; parental consent for persons under 21 required.
Marriages Prohibited—Incestuous; between white and colored.
Common Law Marriages—Not recognized.
Ground for divorce—Adultery; conviction for felony; impotency at time of marriage; abandonment for 3 years.
Residence for divorce—1 year.
Remarriage—Permitted after 6 months, but court may prohibit party guilty of adultery from remarrying.

Washington

Marriage Age Limits—Males, 21; females, 18 years; under these parental consent required.
Marriages Prohibited—Incestuous, including first cousins; between persons having venereal diseases; drunkards; criminals and insane.
Common Law Marriages—Apparently not recognized, decisions somewhat conflicting.
Grounds for divorce—Fraud in inducing marriage; adultery when unforgiven; impotency; abandonment for 1 year; cruel treatment; personal indignities; habitual drunkenness; refusal to support; imprisonment in penitentiary; separation for 5 years; for any cause deemed sufficient by the court, provided the court is satisfied that the parties can no longer live together.
Residence for divorce—1 year.
Remarriage—Not prohibited.

West Virginia

Marriage Age Limits—Males, 18 years; females, 16 years.
Marriages Prohibited—Incestuous, including first and double cousins; between whites and negroes are criminal.
Common Law Marriages—Not recognized.
Grounds for divorce—Adultery; impotency at marriage; sentence to penitentiary; desertion for 3 years; if either was licentious before marriage.
Residence for divorce—1 year.
Remarriage—Forbidden within 6 months of decree.

Wisconsin

Marriage Age Limits—Males, 18 years; females, 15 years.
Marriages Prohibited—Incestuous, including first cousins; bigamous marriages; marriages within 1 year after divorce of either party unless authorized by judge who granted divorce; marriage by epileptics; if any person residing or intending to continue to reside in this state who is disabled or prohibited from contracting a marriage in this state goes into another state and there marries, such marriage shall be null and void. The marriage of a citizen of another state in which such marriage is prohibited shall not be contracted in this state.

Continued on page 214

Senators Discuss Capper Marriage and Divorce Amendment

Pro

HON. ARTHUR CAPPER
U. S. Senator, Kansas, Republican

ONE OF OUR great social and moral needs is a Federal marriage and divorce law. Divorce has been increasing with an alarming rapidity until, according to statistics compiled by the Federal Bureau of Census, there is one divorce to less than every seven marriages in this country. There is only one reason for this—aside from the natural incontrovertible perversity of human nature—and that is the ease with which the unfit and the immature are permitted to marry. Divorce, as an institution, in itself is not an evil. In fact, since marriage is a partnership which to fulfill its purpose, must be conducted in harmony and cooperation, there are times when divorce is an absolute necessity. But it is the abuse of divorce which has become an evil. And these two factors —the marriage of the unfit and the abandon with which divorce is granted in some states, have contributed to the high divorce rate which, if it continues, will in time disintegrate the family life of the Nation. And if the family life is destroyed, the nation itself must suffer.

We have in this country 49 varieties of marriage laws, those of the 48 states and the District of Columbia. There are 48 varieties of divorce laws; one State, South Carolina, does not permit divorce on any grounds. Seventeen states fix no marriageable age—that is, an age at which young people may marry with consent of the parents. In nine of these, the common-law ages of 12 for girls and 14 for boys have been formally recognized. In two states the marriageable age is fixed as 12 for girls and 15 for boys. In one state it is 13 for girls and 14 for boys. In three states it is, respectively 14 and 16.

Although the majority of the states prohibit the issuance of a certificate to a minor below the specified age for marriage without consent of the parents, yet 20 states prescribe no penalty for the official who issues the certificate without the required consent. While all states have provisions requiring marriage licenses, the provisions guarding these provisions are feeble in the extreme. In three states, a license is not imperative if the marriage is previously announced by bans. Only six states make it imperative that both parties to a license must be present at its issuance, and only three states insist upon a lapse of time between the application of a license and its issuance. Only 17 states have specific enactments against the common-law marriage. There are other divergences in the laws, but I think these are sufficient to prove my point. Now, the evil of these divergences is that many states do not recognize the laws of other states. For instance, there are states which forbid the marriage of the feeble-minded among their citizens, annul the marriages if the young people go into another state and are married not according to the law of their own states and return to their home states to live.

On the other hand, many states do recognize the laws of other states, which means that no matter how wise the laws of a state may be, young people may evade these laws by going to some other state where the laws are less wise and marrying when they are unfit for marriage.

Continued on next page

Con

HON. SAMUEL M. SHORTRIDGE
U. S. Senator, California Republican

THIS RESOLUTION proposes that Congress shall be given power to legislate upon the question and enact laws as to both marriage and divorce.

Of course, we all realize that that is a tendency toward centralization of government, and would be a taking from the states powers which they now have. Assuming this power delegated to the Federal Government and that the Congress should legislate upon this subject, what Congress would do in respect to those matters remains to be seen. Congress would have the exclusive power to legislate, with the suggested reservation of power to the several states. So that Congress could enact uniform laws applicable to the United States proper, and if it were deemed wise, a different law as to Hawaii or the Philippines, for example.

Many people have criticized the present situation in regard to marriage because common law marriages are permitted. This marriage is really a present agreement to marry and a mutual assumption of marital rights, duties and obligations. Some states recognize the common-law marriage. According to many books, sacred and secular, the minister does not marry the two people, the judge does not marry the two. The two human beings marry each other. That is the sacred conception of marriage, and the minister or the judge is a witness to it. Many of the laws require a recordation of the marriage. Hence these various laws in the different states requiring notice, or the getting out of a license, or the open assumption of that relation in the presence of a judge or a minister, all to the end that there may be a record of it. But the man and the woman marry each other; that is the legal, and I think the religious view.

Another criticism of present conditions in the states has been concerning the methods of serving process on the defendant in divorce proceedings. It is claimed that most of the states provide for service through publication if no personal service can be had, that often this publication is made in an obscure paper which is never seen by the defendant.

But nearly all the states in respect to service of summons by way of publication provide that in addition to publication in some newspaper of recognized and legal circulation a copy of the complaint and the summons shall be forwarded through the mail to the defendant's last known place of residence. Furthermore a federal amendment on marriage and divorce would not remedy this difficulty. If we assume that the general government had control of the subject matter and through Congress should pass a law as to the service of process, the same difficulty might and probably would arise.

Figures and facts have been quoted showing that in the year 1906, the divorces granted in all of Europe were only two-thirds of what they were for the same year in the United States. Such figures are significant, but merely from the number of divorces granted, one cannot draw the inference that the European nations are superior morally or have better family relations than we have.

Continued on next page

Pro—continued

HON. ARTHUR CAPPER—continued

As for the divorce laws, they vary even more astoundingly. From no ground in South Carolina, to 14 grounds in New Hampshire, the scale runs through 2, 3, 4, 5, 6, 7, 8, and 11 grounds. While the majority of states recognize the divorce laws of the other states, there are at least 8 states which do not recognize them unconditionally. And as the period of residence required before a divorce suit may be brought ranges from six months to three years and as the provisions regarding the process of summons vary, more and more we see complications in the court where the defendant in a divorce suit applies to the court of his or her state to set aside a divorce granted to the plaintiff in another state whose laws conflict with the laws of the defendant's state.

Often those securing divorces in a state outside of their own state marry again and have children by their second marriages, and, returning to their own states, are confronted with suits by the divorced wife or husband seeking to annul the divorce. When the suit is successful, this means that the second marriage is nullified and the children are illegitimated.

As a flagrant example of such conflict of laws, we may take New York State, whose law permits divorce upon two grounds—infidelity and the disappearance of either party for five years. Those who have the wherewithal to leave New York may go to Reno, Nev., or to Rhode Island, or to Paris, France, and, establishing a residence, secure divorces. There are in the court records of New York State a number of cases where these divorces were annulled on the ground that the defendant was not served according to the laws of New York and that the divorce is therefore invalid. Another evil in this diversity of law is the evasion of the law of the other states in the way of establishing false residence. In several states renting an apartment and keeping one's belongings therein for a stated period of time often passes for an established legal residence.

In Nevada, for instance, the residence period is only six months, and while the law demands actual residence in that state for six months prior to application for divorce, there is frequent evasion of the law—not necessarily within the knowledge of the courts. In Paris, I understand, it is now necessary for both husband and wife to be in France, but only for a period of three months. The daily papers are sufficient evidence of with what ease the wealthy have been able to secure divorces in France, by the simple matter of collusion. And this fact makes the New York divorce law a discriminative one, as it means that the wealthy who wish to have their marriages dissolved without the necessity of proving infidelity, may have their divorces by going to another state or country, but the poor must stay at home and bear the burden of their ill-mating.

I shall now go into the necessity of an amendment. I know that at this time in the country there is a feeling among certain groups that the Constitution is suffering from too many amendments. They argue that if the great men who drafted the Constitution had thought it necessary to grant Federal power to regulate marriage and divorce they would have done so. But it must be remembered that social conditions were less complicated than they are today. The population was not so vexed with racial problems. The thirteen original states were for

Continued on page 214

Con—continued

HON. SAMUEL M. SHORTRIDGE—continued

Now the real question as to divorce is, could it be safely left to Congress to determine the grounds for divorce?

Many agree that by whomsoever the laws are to be enacted, there are certain grounds for divorce, or certain causes which may well bring about a severance or dissolution of the marriage relation. What we are concerned about is the multiplicity of causes for divorce and the confusion of laws, and all the troubles and difficulties that flow from that confusion. South Carolina, for instance, has adhered to the policy that divorces are not to be granted for any cause. It will be pretty hard to lift South Carolina out of that position.

In California we have six grounds for divorce. We grant divorce in case of desertion after due lapse of time. In such cases we believe there should be a release from the marriage status with the right to form a new alliance. There are many causes of divorce which appeal to many people which to other thoughtful persons have no merit whatever. It ought to be understood that if Congress should be given power to legislate upon this question there would be great contrariety of opinion as to the grounds for divorce. Many good people who now favor this amendment might rue the day it was adopted. They might come from states where they recognized but one cause of divorce, and believing in that state law, would be horrified at a Federal law which would recognize divorce for one, two or more causes.

An important point in the Capper amendment is the proviso which reads that "every state may by law exclude, as to its citizens duly domiciled therein, any or all causes for absolute divorce in such laws mentioned." That is to say if Congress should pass a law providing for, say, six grounds of divorce, a given state could exclude as to its citizens domiciled therein, any or all of the six causes mentioned in the act of Congress.

It has been remarked that this proviso would nullify the whole proposition as to the uniform law to be passed by Congress.

The situation which will arise has been compared to the prohibition situation, in which certain states have more rigid laws than the National Prohibition law. Where Congress enacts a law such as the prohibition enforcement law, it may be held that its law is supreme and that the states cannot go beyond it. The same situation may arise in reference to the proposed uniform marriage and divorce amendment.

Of course, we all recognize that we live under a dual form of government. Forty-eight states make up the one National Government. I am a nationalist, and I believe in our form of government; and yet, perhaps, the experience of one hundred and more years should teach us that there is great wisdom in maintaining the quasi-sovereignty of these individual 48 states that make up the great Nation.

We ought all to consider just what this resolution means. Those who favor this proposed amendment to the Constitution and those who oppose it should bear in mind that it presents a great question as to the form of our Government—whether the evils complained of are so great as to be dealt with and cured only by changing fundamentally the Government under which we live.

Those who favor the proposed resolution also point to

Continued on page 208

Is Federal Action Preferable to State Action?

Pro

MRS. EDWARD FRANKLIN WHITE
First Vice-President, Chairman, Law Observance Division, General Federation of Women's Clubs

THE MARRIAGE and divorce amendment has been regarded as necessary in order to establish a uniform law. There has been nothing found in the Constitution, neither phrase nor sentence, that authorizes the Congress to enact a uniform law, notwithstanding Congress has adopted three measures which relate to the states; interstate commerce, bankruptcy, and naturalization. But there seems to have been found no authority by which Congress could enact this legislation. That has been recognized also by the United States Supreme Court, as I shall mention later. So that the question then is, how shall we get uniform legislation?

The American Bar Association, through its uniform laws committee, has made an effort to establish this by state action. That has failed. They have failed to pass uniform laws, and it will always fail, because when the legislature in one state meets it can adopt a marriage and divorce law, or an additional ground of divorce, or something of that sort, that will upset the whole uniformity.

Of course, it is true that every state does have comity provisions with reference to laws; that the laws of every other state, and the decrees of its courts, shall be respected. If the laws of every other state with reference to the grounds for divorce and the qualifications for marriage are recognized, then the laws of a single state are of no avail. The law of a single state must be empowered and overridden by the laws of all other states. So that there can be no state government which has entire control over its citizens. It may have control over its citizens while they are resident within their state, because by our laws the domicile of the marriage relation controls the contract.

Marriage is not an institution, but is a contract; a civil contract; it creates a civil status. That civil status follows, or should follow that married pair, or their children, no matter in what state they live. A married pair may change their domicile from one state to another and preserve their United States citizenship. Just so they should be able, we believe, to take their civil status with them to another state. And we believe that Congress should have just the same right to enact laws concerning the removal of the civil status of a pair from one state to another as they do over the removal of grain and manufactures under the interstate commerce laws, because it does create that contract. And, therefore, I believe that while the states have exercised their rights to regulate contracts, and to regulate this contract, that states should not have the right to prescribe the civil status of a married pair that will not be recognized in every other state.

The contract of marriage is different from other contracts in that the parties cannot terminate it at will; it must be terminated by the sovereign power of the state. That is the reason we think it is necessary to have a Federal law.

Citizens of New York may migrate to another state and secure a divorce under the laws of that state, and that divorce will be recognized in New York if it has in that other state also met the conditions and certain requirements of the New York law. And the special re-

Continued on next page

Con

CHARLES T. TERRY
Former Chairman, Conference on Uniform State Laws

THERE CAN hardly be said to be any sound reason why the laws affecting the marriage tie should differ on geographical or territorial lines. It would seem that a law which is sound and proper to govern the people of one section of our country, would be equally sound and proper to govern the people of every other section of the country.

And yet, the fact it that there is the widest divergence in the laws relating to marriage and divorce, and the legitimacy or illegitimacy of children throughout the various States of the Union. They are so divergent that it may and frequently has happened that a man who has had some matrimonial complications may be a married man under the laws of one of our States, unmarried under the laws of another, a bigamist under the laws of a third, and so on with all sorts of variations of laws affecting domestic situations.

His children under the laws of one State may be legitimate with all the incidents of property rights flowing from that condition, whereas under the laws of another State they are illegitimate and deprived of such property rights. This difference in the laws governing marriage and divorce in the various States has, as is well known, been a prolific source of trouble, injustice, and indeed of disgusting scandal.

It has led to the practice of deception upon the courts of various States in the matter of migratory divorces. It has led, if not to the actual purposeful enactment of laws, at least to the retention on the statute books of some of our States of divorce and marriage laws, for venal ends, and without justification save for revenue only.

To those who have given thought to the question it is clear that the difficulties, hazards, annoyances, and losses which arise from the diversity of State laws are not to be obviated by Federal legislation. In the first place, it would require amendments to the United States Constitution before Congress should have the power to enact laws in the premises.

This would present difficulties enough, irrespective of the incontrovertible arguments and reasons against the interference of the Federal Government in these State matters and quite apart from the proposition that the logical manner of dealing with this question and the manner indicated by our system of government from its inception is the method followed by the conference of commissioners on State laws.

The opposition to the assumption by the National Government of further authority in governmental affairs is so strong that any movement in that direction would doubtless be bitterly opposed, and in any case such movement would be a disavowal, to that extent, of the soundness of the division between government by the sovereign States of the matters intrusted to them, on the one hand, and, on the other hand, government by the Federal authorities in the matters intrusted to them.

If we are to be and remain a nation, the rights of citizens must be clear and uniform throughout the various sections of this country, so far as those rights are of an interstate nature. Either this, or our system of government is a failure.

Continued on next page

Pro—continued

Mrs. Edward Franklin White—continued

quirement that I refer to is the matter of notice. That if notice of the divorce is made by publication in other states, it does not comply with the New York law. In other words, that state has not jurisdiction of the parties, in accordance with the New York law.

I believe that the question of the civil status, the civil contract of marriage, should be just as much a matter of interstate commerce as transportation. I believe that family bankruptcy is as much a matter of Federal recognition as financial bankruptcy. And I believe that the creation of the civil status is just as much a matter of Federal cognizance as the naturalization of a citizen.

Many things have been said regarding the growth of divorce. Such a discussion is not exactly in point. But one thing that conduces to the great increase in divorce was brought out by a survey made in our own state of Indiana by an Indianapolis newspaper. We have two Gretna Greens in Indiana: One just across the river from Louisville, and one just outside of Chicago—Crown Point; and the marriages that have taken place in spite of the law that exists in Indiana that the license must be secured in the county of the woman's residence—in spite of that a very great number of licenses are granted at Crown Point, in Lake County, and at Jeffersonville, in Clark County. The survey made through the newspaper shows that 75 per cent of the marriages taken place in Jeffersonville are illegal; the licenses illegally granted, and further shows that 75 per cent of those thus taking place have resulted in divorce. The reason for that is that in thirty-two states marriages may be annulled for nonage. This has resulted in a situation, whereby parties of high school boys and girls, wind up by their going to another county and securing licenses and five or six of the couples becoming married, knowing that the marriage may be annulled when the lark is at an end and their parents have found it out.

The federal law we recommended provides that the enforcement shall be in the state courts, because it was felt that to crowd the divorce proceedings in Federal courts would overcrowd them. It is entirely proper to put this enforcement in the state courts. And the bill itself is the final product of the American Bar Association's uniform laws committee, because it is their law with considerable additions and modifications. The adoption of uniform laws by the states, in the first place, is practically impossible. Theoretically, it is possible, but practically speaking it is impossible; and the result is that the uniformity may be upset at any time.—*Extracts, see 1, page 214.*

Jennings C. Wise

Article, Central Law Journal

WHETHER or not uniform divorce laws should be established by Congress among the states of the union, is a broad and intricate question.

In attempting to answer the above question, the utmost caution must be observed, in order that we fail not to discriminate between the moral and legal phases of divorce. The hypothesis, in which are given divorce laws, precludes the necessity of our passing upon the morality of divorce. In effect, the question is—Shall we unify existing sanctions to the dissolution of the marriage relation? Shall the states composing the union surrender, by amend-

Continued on next page

Con—continued

Charles T. Terry—continued

Either the States must bring about such harmony, or the Federal Government must do it. For the Federal Government to do it means centralization, and it means at the same time an extension of the powers of the central Government far beyond anything contemplated at the organization of the Government or established by the Constitution.

It is clear that there is only one answer to the question and only one antidote to the centralization of government, and that is uniformity of State laws. And harmony will not be secured so long as any State, or set of States, maintains a false notion of "States' rights" and persists in riding it as a hobby and in disregard of the rights of citizens of other States.

That is not "States' rights" that is "States' wrongs." The States must all pull together, or they will all pull apart. States' comity contemplates this, and States' harmony requires it. There could be no more essential element in the cement which binds the States together than is uniformity of the States' laws.

In not a few instances the divergence of the laws and policies of different States have brought our people to the verge of civil strife, and in one instance drove them into a lamentable conflict. This is the more regrettable because, however natural under our governmental system—in which sovereignty is divided between the separate States on the one hand and the National Government on the other—the diversity of laws might be, the continuance of such a condition of affairs is utterly unnecessary and illogical.

There is no such difference of requirement in respect of law arising from difference in geographical position as would justify such a situation. While, of course, there is in some instances the necessity for peculiar laws having a strictly local application, and for the duplication of which in other States there would be no reason, nevertheless it is true that in a great many instances—I was about to say in most instances—not only would there be no reason why the laws of the States on given subjects should not be uniform, but, on the contrary, every reason why they should be.

At least, upon every subject of interstate interest and concern the laws should be standardized or made uniform throughout the whole country. Otherwise inconvenience, annoyance, embarrassment, complication, and loss must inevitably ensue.

The movement for uniform State laws rests upon the proposition that if we are really a nation there is no reason why imaginary lines called the boundaries of States should cut off in matters of law one section of the country from another. The theory is that if any citizen of this Nation is affected in his life, liberty, property, or pursuit of happiness by the laws of the various States, those laws should be uniform, so that he may know just where he stands, and not be obliged to learn a new code of laws with reference to his property, his life, his liberty, or his happiness every time he passes over an imaginary geographical line.—*Extracts, see 7, p. 214.*

Walter George Smith

Commissioner on Uniform State Laws

RENEWED efforts are being made to secure an amendment to the Constitution that will give the

Continued on next page

Pro—continued

JENNINGS C. WISE—continued

ment to the Constitution, their exclusive jurisdiction of divorce and authorize Congress to pass uniform laws upon the subject. Common sense and good morals as well, suggest that such additional power be vested in the central government. Keeping ever in mind the fact that we are not to concern ourselves with the moral phase of divorce, let us investigate the present status of divorce in this country.

The variance between the divorce laws of our states will be found to exist without respect to the grounds upon which a divorce may be obtained, as to matters of jurisdiction, as to matters of defense and lastly, as to the penalty imposed upon the guilty party or parties.

Some states impose a penalty upon the guilty party in a divorce proceeding which attaches a disability to contract a subsequent marriage. Binding as such a disability may be within the jurisdiction of the court imposing the penalty, it is easily overcome by the penalized party resorting to some jurisdiction where no such disability attaches to the guilty party. In such jurisdiction, a valid marriage may be contracted and the contracting parties enabled to return to the original jurisdiction and dwell as man and wife, recognized as such, by the very courts which imposed the disability. In other words, the variance between the laws of the several states makes possible a complete evasion of the law of some of those states. What reason may be brought to the support of such a legal anomaly? Then too, certain questions with regard to other incidents of divorce, such as costs and alimony, arise, creating the greatest bewilderment and militating against that certainty of status which is claimed to be expedient. To what end is such confusion of service to the states.

It will be said that the Constitution would have included such a provision had the states deemed it wise to delegate this power to Congress; that to give the central government this additional power is to diminish the reserve power of the states to too great an extent, etc., etc.

Such arguments do not in any way deny that the divorce laws should be uniform among the states. In fact, by implication, we may infer a tacit acknowledgment at least, on the part of the propounder of such an argument that he is not opposed to unification itself, but merely to the further delegation of power to the central government.

The powers delegated to the central government group themselves under two heads. 1. Powers incident to the sovereignty of the United States. 2. Powers which it was deemed expedient that the United States as a sovereignty should exercise.

To the latter class belongs the power of Congress to establish uniform laws among the states on the subject of bankruptcy. The exercise of this power by Congress was permitted on the grounds of expediency and not because of some innate peculiarity of insolvency. The evils growing out of the lack of uniformity of the laws among the states on the subject of bankruptcy required energetic curtailment for the good of the states themselves and each state had come to know by bitter experience that no state by itself was able to eradicate those evils, which by their very nature were the out-growth of co-existing sovereignties over whose jurisdiction it could exercise no control. Since the evils then were general and each state

Continued on next page

Con—continued

WALTER GEORGE SMITH—continued

Federal Government jurisdiction over the subjects of marriage and divorce. It is urged with great force and appositeness that this is the surest way to obtain uniformity and to secure a certain and final recognition of the decree when rendered, in all of the states.

An objection to the amendment lies in the fact that the statistics show the greatest proportion—not less than 75 per cent probably—of all divorces are regularly granted by courts having actual jurisdiction over both parties. Therefore, the evil of migratory divorces, as they are called, is far less important than at first appears. As a rule, the high social standing or wealth of the parties is the cause of great publicity, and when either of them seeks a foreign jurisdiction the fact is heralded as evidence of a wide-spread custom. The laws of most of the states are sufficiently liberal to make it a comparatively easy and much less expensive matter to secure a divorce in the home jurisdiction.

Another objection arises when it is shown that Federal legislation might bear hardly on the state of South Carolina, where no divorce is permitted, and yet a Federal law would give it, and in such states as New York and North Carolina where, if the legislation should reflect the prevailing sentiment of the majority of the states, the causes would be increased from one to six.

It is an obvious tendency whenever difficulties arise because of the exclusive jurisdiction of the states in the exercise of their reserved powers, to turn to constitutional amendment in the belief that uniformity can best be obtained by throwing the burden of the subject on the already over-weighted national government.

It is a mistake to assume that the diversity of causes for divorce among the different states is the principal reason for the confusion that exists. So long as the states confine the exercise of their jurisdiction to their own citizens, it makes no practical difference what the causes may be, excepting to the citizens of those states themselves. Much of the uncertainty and scandal that have arisen have come from the assumption of jurisdiction by the courts of one state, which has failed of recognition in others. If the jurisdictional provisions of the uniform law proposed by the National Divorce Congress in 1906 were adopted, the end would be gained without amendment of the Federal Constitution.

So far as causes and procedure are concerned, while uniformity is of course desirable, it is not essential. Briefly, the jurisdictional features of the proposed uniform act [recommended to the states] provided that for purposes of annulment of marriage there must be personal service upon the defendant within the state, when either party is a bona fide resident of the state at the time of the commencement of the action; and for purposes of divorce, either absolute or from bed and board, by personal service upon the defendant within the state: (*a*) When at the time the cause of action arose, either party was a bona fide resident of the state, and has continued so to be down to the time of the commencement of the action; except that no action for absolute divorce shall be commenced for any cause other than adultery, or bigamy, unless one of the parties has been for the two years next preceding the commencement of the action a bona fide resident of the state. (*b*) When, since the cause of action arose, either party has become, and for at least two years next pre-

Continued on next page

Pro—continued

JENNINGS C. WISE—continued

was individually unable to destroy them, to say that the states delegated to Congress the power to make uniform laws on the subject of bankruptcy is erroneous, since a power never in the states could not be disposed of by them. The states however, did surrender to a certain extent their power to legislate as to bankruptcy, a power at times utterly unavailing in themselves, and by reason of such surrender specified that Congress might make uniform laws on that subject. In other words, by surrendering a power which was ineffective in their own hands against a deadly evil, the states were immeasurably benefited under the common weal.

And so, the right which each state now reserves to make its own laws on the subject of divorce, can in no way be used to the eradication of the evils due to lack of uniformity of the divorce laws among the several states. No state may now eradicate the evil growing out of the practice of its own citizens seeking the sanction of other jurisdictions to acts contrary to the laws of their own community, since no state has the power to make uniform laws upon any subject among all the states and, therefore, to enable Congress to make such laws would not be to take such a power from any or each of the states. It is true that each state would be divested of a power, that of making its own divorce laws, but by a general surrender of this right the states would authorize Congress to correct the abuses which they themselves are now powerless to reach. It is true also that the power of Congress would be increased, but to the great benefit of the states, assuming that uniform divorce laws would be beneficial.

There are many, however, who will contend that uniform divorce laws are not desirable on the ground that the laws governing divorce should be peculiarly influenced by local policy; they will take the ultra-conservative view that divorce laws are local issues, that environment, territorial circumstances and peculiarities in the organization of societies render a difference in such laws quite necessary among the states of the union. Facts do not support such a contention.

There will be found those also who argue that unification of the divorce laws of the several states would necessarily disturb the present status of many, and affect the marriage relation in general. Such arguments will be advanced more frequently by persons from sections of our country, wherein persons of African descent are to be found in large numbers, mixing promiscuously with the whites. It is plain to see that the fear of miscegenation prompts such an argument.

The answer to such an argument is that divorce presupposes a valid marriage. To divorce means to separate from the condition of husband and wife, and only those can assume that relation who have been united in lawful wedlock. There can be no baron unless there be a femme. Since this is true, unification of the laws governing the release of man and woman from the marital obligation does not concern the question of who is and who is not married. That question is left as before for the states to decide to their own satisfaction, and should they make provisions rendering miscegenation unlawful, there can be no baron and femme upon which the congressional laws could act, for the laws which Congress would be empowered to make, would merely prescribe

Continued on page 214

Con—continued

WALTER GEORGE SMITH—continued

ceding the commencement of the action has continued to be, a bona fide resident of the state; provided the cause of action alleged was recognized in the jurisdiction in which such party resided at the time the cause of action arose, as a ground for the same relief asked for in this state; provided that if an inhabitant leaves the state of residence to obtain a divorce in another state for a cause arising in the state of residence, and not recognized therein, such divorce shall have no force or effect in the state of first residence. Where personal service cannot be obtained, provision is made for service by publication, to be followed, where practicable, by service upon or notice to the defendant without the state, or by additional substituted service upon the defendant within the state.

If there were any real, strong, popular discontent with existing conditions, these reasonable attempts to obtain uniformity would long since have met with approval, but so far only the states of Delaware, New Jersey, and Wisconsin have adopted the uniform act. Even Pennsylvania, whose initiative brought about the Congress of 1906, has persistently refused to accept the proposed act. Such well-meant attempts to bring about reform, as Senator Ransdell's proposal to amend the Federal Constitution so as to prohibit all absolute divorce, and Congressman Edmond's, to give jurisdiction to the Federal Government of the entire subject of marriage and divorce, would seem to be unsupported by any large proportion of the voters outside of the Catholic Church, which forbids to its members all absolute divorce. The fact is that outside the large body of Catholics, the masses of the people do not look upon existing conditions with any real appreciation of the dangers connected with them, being more concerned that the unhappiness arising from the frequent mismating of couples shall be cured by what is called "the surgery of divorce," than with the injury entailed upon the morals of the community at large.

It would seem that there is more prospect of checking the divorce evil by amendment to existing laws intended to bring about greater publicity of requiring notice of intention and making a license a preliminary requisite to marriage, than by change in the divorce laws, so long as the present temper of the people remains unchanged.

A prolific cause of divorce in certain ranks of society is desertion by the husband, who finds it difficult or has become tired of the burden of maintaining his family. Desertion laws are being enacted in many states, which makes such desertion a crime and the offender subject to extradition. He is given an opportunity under suspended sentence to work without imprisonment. If he declines, he is employed on public works or otherwise by the state, and his earnings are paid over for the support of his family. It rarely happens that the offender does not prefer to work under suspended sentence. Those who observed the working of this law highly approve of it.

It must not be assumed that the effort to educate public opinion to an appreciation of the manifold evils arising from a lax divorce system should be given up, but the experience of those who have advocated the adoption of the uniform law, drafted by the National Divorce Congress and afterward approved by the Conference of Commissioners on Uniform Laws, shows that it is a task of very great magnitude to arrest the trend of society toward a low estimate of the binding effect of the marriage tie.—*Extracts, see 1, p. 214.*

Is a Uniform Marriage and Divorce Law Desirable?

Pro

HON. ROBERT GRANT
Judge, Boston, Mass.

LET ME ASSERT here that I am not opposed to divorce or shocked by it. I have always believed in and championed it as democracy's medium of escape from intolerable conditions in marriage.

Having shown where I stand, you will not misinterpret me when I say that today in this country we are experiencing an epidemic of divorce which, on the surface at least, is a hideous blot on our moral repute and an alarming menace to the traditional ideals of our family life.

One tangible and enormously important proposal lies ready at hand: The proposal by Congress of an amendment to the Constitution of the United States which would establish a uniform national marriage and divorce law to be enforced, however, not by Federal machinery, but by the courts of the several States.

This proposal would require a two-thirds vote of both houses of Congress and subsequent ratification by three-fourths of the several States, and is a difficult achievement. But if the women of the country unite to support this urgent reform and press it with that same vim and enthusiasm which they have displayed in other matters upon which their hearts were set, it can be done.

"Why is an amendment to the Constitution of the United States essential?" The answer is simple: In order to harmonize the laws concerning marriage and divorce in all the States. Under the Constitution as it stands there is no Federal control of domestic relations, and, as I have already explained, each State is the arbiter within its boundaries of the requirements of marriage and the facilities for divorce. And with abhorrent consequents! Forty-eight different sets of marriage regulations leading to the altar, and forty-seven divorce laws (for we must not forget South Carolina) leading from that altar to the divorce court and then again to another altar. All the component parts of this nation worship the same God, aspire to speak the same language, and extol the same domestic virtues. Therefore they should be guided by the same domestic laws.

And the marriage laws are even more deplorable. Whereas the divorce scandal is notorious and all know about it, heretofore only experts and students have realized how cruelly and ignorantly the young have been permitted to mismate. That hardy offshoot of liberty—the idea that marriage is nobody's business except the contracting parties—has offered constant encouragement to ill-considered or dangerous mating by neglecting to restrain the marriage of the very young, the feeble-minded, and the diseased. And this is bound to spell disaster for family concord and welfare of offspring.

But what shall we do, you ask? At the start you are sure to be told by doubting or cautious souls, most of them men, that the panacea of a Constitutional amendment for the marriage and divorce evil has often been hopefully mooted and as often reluctantly dropped. And why dropped? Because the unlikelihood of being able to induce the citizens of three-fourths of the States to sink their community idiosyncrasies in favor of some com-

Continued on next page

Con

HON. JAMES P. GREGORY
Judge, Louisville, Ky.

ANY PRACTICAL plan for bringing about uniform or even approximately uniform marriage and divorce laws necessarily involves an amendment to the Constitution of the United States.

In the seven years, 1913-1920, we adopted more amendments than in the hundred and nine preceding years—a situation that most forcibly admonishes us to pause and meditate before changing its provisions further. Numerous or frequent amendments to the Federal Constitution necessarily destroy much of its virtue as a stabilizing influence in our complicated system of laws. They make the future, into which great plans for great enterprises must necessarily be projected, uncertain and forbidding.

Though many unfortunate defects exist under the present system and countless abuses are practised, there is no assurance that a new law, passed by Congress under the proposed amendment, would correct more abuses than it would create, or that those created would be less serious than those corrected. Conceding that it would be the product of abler legislators than we usually have in the several States, no one can conceive of a bill so vitally affecting the homes and families of the nation being other than a composite of the thought and sentiment of forty-eight different States, reached after compromises and concessions without number. Instead of springing from the convictions, meeting the views and commanding the sympathy, respect and support of the citizenship of the several States, such a law would necessarily arouse bitter hostility and deep resentment wherever it conflicted with vital provisions of the existing laws. Without such support efficient administration of the law is impossible.

In the nature of the case, national legislators can not be as sensitive to the wishes or as responsive to the appeals or needs of their individual constituents as are our State representatives. That there are vital and fundamental differences of sentiment and conviction between the people of different sections upon the subjects of both marriage and divorce admits of no sort of doubt. And those who have a faint conception of the value of State sovereignty and fair knowledge of the purpose of our Federal Government would desperately resist the surrender of such important, distinctively local governmental powers.

The very diversity of present State laws is an unanswerable argument to any reason for forcing upon the people of forty-eight sovereign States, in a matter of purely domestic policy, a composite of heterogeneous theories, numberless concessions and compromises, necessarily embraced in any act Congress could possibly pass.

The controlling purpose in the establishment of the Federal Constitution and Government was to provide a common governmental agency which could more efficiently discharge certain governmental functions than the States could do separately. To the Federal Government was given power to coin money and regulate its value, provide for the common defense, regulate mails, interstate commerce, foreign relations and so on. The wisdom

Continued on next page

Pro—continued

HON. ROBERT GRANT—continued

promise to benefit the nation caused the promoters to take a back seat and murmur, "It's no use to try." They closed their ears in anticipation of the outcry of forty-eight sovereign peoples that "our laws to protect the sanctity of the home are good enough for us. Do you think we would vote to change them at the bidding of highbrows?"

Their fear was the counsel of the faint-hearted, yet until recently it was justified. The tenacity of local sentiment and of the doctrine of State rights dies hard and yields only to the ardor of aroused conviction. But now a new force is in the field—the voting power of woman. And if she whole-heartedly organizes in defense of her imperiled castle, the home, and proclaims from East to West and North to South that the time has come for all who love their country to harmonize their differences on this vital issue, it can not be doubted that the citizens of three-fourths of the several States will fall into line and ratify any reasonable marriage and divorce law which Congress shall pass. The American people, if this issue is clearly set before them by a nation-wide campaign of education, are too intelligent not so see the need of such a law.

As for the bill which will follow in due course, it is as certain as the rising sun that Congress would not support an illiberal bill, one either niggardly with respect to reasonable grounds for divorce or onerous from its impediments to marriage. The majority of divorces occur because people are unhappy, and when a tangible ground is sought they are liable to invent one if the statute does not fit their case. The courts are practically powerless against collusion, and students of social results are agreed that the more stringent the laws the less likely are the figures to conform to the actual number of estrangements and separations or to indicate their genuine cause. Similarly, too great a restriction of matrimony would tend merely to increase the number of illegitimate children. What is required is a measure which, making due allowance for human frailty and ignorance, recues the institution of marriage in this country from its present chaos of abhorrent contradictions and puts it on a plane where the legal provisions for it and its dissolution are everywhere the same.

But let me here anticipate and dispose of one last deterrent by which the discouraged or the artful will seek to frustrate this great movement. More than twenty years ago, at Washington, a number of States agreed to try, by Uniform Laws Commissions, to harmonize the general lack of conformity in the laws, including those dealing with marriage and divorce. Ten years have elapsed since these commissions, representing the best legal and moral intelligence of the nation, approved for adoption a wise and reasonable marriage act and a uniform divorce act of equal merit. The hope was that so many States would be ready to alter their laws that substantial uniformity would gradually result.

And what has been the actual accomplishment? Summarizing a year ago, I wrote: "Up to 1918 the Marriage License Act has been adopted in only 2 out of 51 States and Territories, the Marriage Evasion Act in only 5, and the Uniform Divorce Act (a new draft approved in 1907) in only 3. A pitiful showing from the point of view of readiness to subordinate community sentiment to a care-

Continued on next page

Con—continued

HON. JAMES P. GREGORY—continued

of such delegation of powers has been demonstrated beyond the possibility of all rational doubt. But to employ the Constitution as a means for one community to force its will upon another in matters of distinctively local concern would involve a radical departure from its chief aims.

That grave evils exist under present laws admits of no doubt, but that they exist rather by reason of the weakness or perversity of individuals abusing the law than by reason of any condition that the wisest law could, or would, remedy is equally certain. By all means let the whole country address itself to the problem of remedying the great abuses now existing, let it appeal to the consciences and judgment of all citizens, let it give the best of counsel and cooperation to every State legislature for the improvement of its laws. But, if our object be the betterment of existing conditions, let us, when we touch the home and family, speak in a voice of friendly counsel and not in words of austere command. Let our campaign be one of friendly cooperation, not one of meddlesome force. The one policy may accomplish much good. The other is certain to cause great harm.

One irreconcilable difference of opinion honestly entertained by overwhelming majorities in different sections of our vast country would alone afford a sufficient reason against an absolutely uniform law on this subject. The practice of miscegenation has in it the smoldering embers of the Civil War and all the better antagonisms of the Fifteenth Amendment period. Good Americans do not wish these embers fanned into flame, as they would be if arbitrarily there should be forced upon the people of the South the legalizing of marriage between the white and colored races. Our country is far too vast in area and its people too varied in habits, ideals and environment for one lawmaking body to know all their needs adequately or administer to them properly.

If it be asked how can we meet the serious evils of marriages legal in one State and not in another, or of children legitimate in one and not in another, the answer may be found in Section 1, Article IV, of the Constitution of the United States:

"Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State. And the Congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof."

The Supreme Court of the United States in the case of Haddock vs. Haddock, 201 U. S. 562, held this provision to apply to divorce cases. It is now the supreme law of the land, despite all effort or power of State courts or legislatures to evade it. Under this section of the Constitution, as well as under Section 2, Article III, Congress has full power to enact a general law that will compel all States to recognize the validity of the judgments of every State as to subject matter and between parties within the jurisdiction of the courts of the several States.

Extracts, see 3, p. 214.

MILTON IVES LIVY
Attorney-at-Law, New York

HOWEVER we may differ as to the policy of divorce laws, we can all agree that a system which results frequently in parties being regarded as divorced in one

Continued on next page

Pro—continued

HON. ROBERT GRANT—continued

fully considered code that would unify the laws in their application to family life from the Atlantic to the Pacific." Understand why these results have been so meager. The several Legislatures have failed to act because there was no public agitation in favor of the changes. Only the experts appeared in advocacy of them. What is everybody's business becomes nobody's business, and the public conscience has sidestepped the isue with the happy-go-lucky shibboleth "Let George do it." This sluggish attitude will continue indefinitely unless the women make it their business to transmute it into a wave of moral indignation.

All authorities are agreed that a Federal amendment, and a Federal law enforced by State court machinery, is the preferable way to a better marriage and divorce system. If we were to wait for the forty-eight States to pass uniform laws, it would be the millennium before they could be brought to agreement. And even then, at any time, each or any of the States could, if so disposed, pass additional laws to nullify the uniformity. A Federal law authorized by a Constitutional amendment becomes a law everywhere in the United States when ratified by the Legislatures of three-quarters of the States.—*Extracts,* *see 8, p. 214.*

DORIS STEVENS

Vice-President, National Woman's Party

THE PROPOSED amendment to the Constitution will guarantee citizens in equal measure everywhere their civil rights which flow from the marriage status. It will prevent one State from taking away the status a citizen enjoys in another State. It will also prevent harsh and restrictive divorce laws in any one State. It will, however, reduce the number of grounds permitted in a few States. So far as the provisions of a specific bill are made liberal, just so will it be difficult to pass. The more restrictive the measures, the more easily it will be passed.

I am therefore in favor of the proposed amendment to the Constitution making uniform marriage and divorce though I am not in favor of the Capper Bill on which the majority of supporters of the idea of uniformity have united.

The proposed law will not do all that its official proponents claim. It will not decrease the divorce rate, one of the vital motives behind its advocacy by some groups. What is more likely to happen in making divorce more available over a wider area, is that the divorce rate will increase. I hasten to say that this is one of the reasons that commends the proposed uniformity to me for support. I digress to say that this does not mean that easy divorce will be a panacea.

The American Bar's early interest in uniform marriage and divorce laws undoubtedly sprang from lawyers' personal and professional embarrassments at having served clients well in one State only to learn that their advice, acted upon in good faith in one geographical unit, was overturned in another geographical unit. Meanwhile their clients' properties, good name, and children had been, in the order named, confiscated, ruined, illegitimated because of the vagaries of the law and judicial rulings. It was, and still is, most confusing.

Deprivation of inheritance, bigamy, bastardy, may at-

Continued on next page

Con—continued

MILTON IVES LIVY—continued

State, but not in another; in a marriage being valid in one State, but invalid elsewhere; in a child being a lawful heir in Ohio, but illegitimate in New York; and under which it is possible for a man to have several wives at once in different parts of the union—is a disgrace to our civilization.

This state of affairs has been brought about mainly by the different judicial views of the question. A divorce would certainly be perfectly good and binding where granted; but how will other States regard it? The Constitution of the United States provides that "full faith and credit are to be given in each state to the judicial proceedings of every other State, and the effect thereof may be prescribed by general laws of Congress." In pursuance of this provision Congress has prescribed that they shall have such effect in every court within the United States as they have by law or usage in the courts of the State in which they are taken.

The current of the New York decisions is to the effect that the courts of another State cannot dissolve the matrimonial relation of a citizen of New York who, during the pendency of the proceedings in the other States, was domiciled in New York, and did not voluntarily appear, but was served in the usual "publication" method.

We have prevailing in the United States a system of laws which, as already stated, allow of parties being divorced in one State but not in another. The question remaining is, What is the remedy? The one generally suggested is that the causes for divorce be made uniform throughout the United States by a constitutional amendment? At present Congress has no power to pass a general law of this kind. The obstacles in the way are apparently insuperable and the objections numerous. It is true that while it is natural and to be expected that different nations living under different forms of government, surrounded by different circumstances, and existing under different social conditions should differ in their views, the spectacle of component parts of the one nation having severally different systems and regulations on a question affecting the personal status of a citizen of the nation, presents an absurd anomaly.

Yet who is to say which of these States is right—the one which admits of but a single cause for the dissolution of the marital tie, or the one which sees other causes in addition? And which of these States is likely, or would be willing, to give way to another in its views in regard to the grounds on which a divorce should be decreed? It is improbable that such an amendment would be ratified. It would further meet with violent opposition from the large number of people who would see in it a long step toward their bete noir—centralization. But it is unnecessary to discuss this point—because, in the first place, such an amendment is not needed; and, secondly, it would not afford the required remedy.

We can, I think, do away with the evils without asking any State to decrease or increase the causes for which its laws allow for divorce, or requiring it to accept the views of another State upon this question of policy; for while it is true that a liberal policy induces those who desire to cast off the matrimonial yoke to seek that State which affords the relief which their own denies, yet the complications resulting are not the result of the grounds of divorce, but of the judicial constructions which have been

Continued on next page

Pro—continued

Doris Stevens—continued

tach themselves to people in one State, innocent in the eyes of a neighbor State. The security of inheritance, the right to remarry without being bigamous in the eyes of the law and your neighbors, and the right to be sure of your legitimacy are now bandied about in precarious fashion.

Now the Constitution is supposed to be a document which guarantees to us certain human rights with which no State can tamper. At the present time the Constitution does no such thing in the matters of marriage and divorce. Art. IV, Sec. 1, says: Full faith and credit shall be given in each State to public acts, records, and judicial proceedings of every other State.

Concerning this full faith and credit clause when applied to the question of marriage and divorce the Supreme Court of the United States has spoken with precision. Until its ruling in the famous Haddock versus Haddock case has been superseded, the following law holds:

"If one Government, because of its authority over its own citizen, has the right to dissolve the marriage tie as to the citizen of another jurisdiction, it must follow that no Government possesses as to its own citizens power over the marriage relation and its dissolution. If the full faith and credit clause of the Constitution were recognized as to marriage and divorce it would destroy the State's power over them, and the United States would be powerless to repair the evil, for it has no delegated authority on the subject." Haddock v. Haddock, No. 119, decided April 12, 1906.

What is the case for making uniform forty-nine separate codes, forty-eight States and the District of Columbia?

Marriage is a civil contract. Two people contract to live together. The contract creates a civil status. The civil status of that pair and their offspring is one of the human rights which should not be determined by the boundaries of the State in which they live. It should prevail no matter in which State they choose to live. Furthermore marriage purposes to protect property and children. It fails to do so unless the civil status is protected as unalterably as are the rights of citizenship.

The marriage contract differs from all other contracts in that it is the only contract that cannot be terminated at the will of the two contracting parties. The State steps in. The power of the State now determines the terms of dissolution. Under the present chaotic system a citizen may be divorced in one State and not in another. The status is a sham. And what happens to the children?

Mrs. Stevens, of Illinois, divorced, went across the border into Indiana, to be married again, thus avoiding an Illinois law concerning the right of divorcees to remarry. On the death of her husband, she was denied the right to his property on the ground that she was not his wife. (Stevens v. Stevens, Supreme Court of Illinois, 136 N. E. 785, 1922.)

Similar confusions and injustices are countless. There is no way out so long as one State does not recognize the acts of another on marriage and divorce, and it is quite clear they cannot, if their own laws are to be sovereign. If this potpourri is ever to be remedied, it will have to be done uniformly by the highest law of the land.

The principal objection of opponents to the uniformity of marriage and divorce is that the bill that will follow

Continued on next page

Con—continued

Milton Ives Livy—continued

placed upon the question of jurisdiction, and upon the question of the effect of a foreign divorce where the court granting it had actual jurisdiction over only one of the parties to the suit, and the other not being domiciled in or a citizen of the State, was constructively served with process, and did not actually appear.

Is there then no remedy which does not present reasonable objectionable features, and which would be likely to meet with general approval? I think there is; and after careful consideration submit two suggestions—:

The Constitution of the United States provides that the effect of the judicial proceedings of each State in every other State may be prescribed by general laws of Congress. The ready and at once available remedy is to be found in this clause. It is for Congress to pass a law declaring, in effect, that every judgment of divorce rendered by a State court of competent jurisdiction, and valid under the laws of the State, shall be of full force and effect and unquestionable, except for actual fraud practised upon the court which granted it, in every other State—provided that the court granting it had actual jurisdiction over both parties, or provided that the marriage which it dissolves was contracted or consummated in the State the courts of which rendered the judgment; and so far as the status of any child or children may be affected, no judgment of divorce, valid under the laws of the State where it was rendered, shall in any wise be questioned or disregarded.

What objections, of sufficient weight to counterbalance the general benefit and public good, can be urged against a remedy of this kind it is difficult to perceive. On the one hand, no State is asked to give way to another, or to change its policy or its ideas of what are the proper causes for divorce, a simple question of practice only is affected. On the other hand, a check would be put upon promiscuous divorces, because they could not be so easily obtained; ignorance of the law, or the fact that legal advice perfectly correct where given was followed, could not be pleaded; men and women could not unwittingly involve themselves in complications; and, over and above all, the rights of innocent children would be protected in all cases, and they themselves would be spared the blasting stigma of illegitimacy. It is the greatest misfortune of our present system that the law, in its judicial and legislative sources, pays so little attention to the resulting consequences of the conflict as it affects the legitimacy offspring and the duty of support. The question of the legality of cohabitation should be separated at least from the question of the legitimacy of innocent offspring, begotten in apparently regular matrimonial union; and if we cannot for any reason have the constitutional amendment, at all events let us have the proposed law, which it is within the present power of Congress to enact and which would, if it did nothing else, accomplish this devoutly to be wished for consummation.

But the second remedy is preferable, because with the abolition of the absurd prohibition in force in New York, it would completely do away with the present state of affairs so disgraceful to our civilization, and bring order out of chaos. It still leaves to a deserted wife or husband who cannot serve process upon an absentee offender an opportunity to procure a divorce in the State where he or she was married. It may be said that sometimes this

Continued on next page

Pro—continued

DORIS STEVENS—continued

the amendment when ratified, will not be liberal enough. Let us examine this valid objection.

Divorce laws at present are as follows: New Hampshire and Kentucky lead. They permit divorce on fourteen grounds. South Carolina does not permit it on any grounds. The liberality of the former States is highly to be desired. The reaction of the latter is abominable. In between, the grounds of divorce range from three and four to ten and, in one State, eleven grounds.

Residence requirements vary. Two States require six months residence before a suit may be brought. Thirty-three States require one year. Eleven States require two years. Two States and the District of Columbia require three years. Requirements of service are as varied. As we have seen, court decisions follow no known rules.

Are we to be guided by the stern and moralistic Middle West? The answer is yes. Until the State of New York enacts a divorce law less antiquated than its present one (there are two grounds only), New York cannot with sincerity shrink from having Kansas set its standard. The ability of New York residents, economically favored, to migrate without much discomfort, to Reno, to Paris, to Yucatan, militates against liberalizing her own law. The powerful in the community will pay no attention to the availability of divorce to individuals economically less favored. So long as there is a Nevada to escape to, so long as there is a Paris offering gay consolation to the distressed, so long as there is a Yucatan full of divorce vendors who ask no questions, better laws in more populous and more accessible States will not be insisted upon.

This is a glaring injustice to the poor who should find divorce as easy for them as for others. It is all very well to say: Don't prune the standard of the best State. But such a pruning resulting in a medium standard bill, will make divorce more accessible to the majority while making divorce no less available to the rich.

Since a Constitutional amendment is imperative before the civil rights of a citizen in marriage and divorce can be preserved, no matter where the citizen lives, I would like to see the amendment passed. Since the Capper Bill is cumbrsme and too restrictive for my support, I would like to see it fail. Whatever bill is passed will be only as liberal as awakened social pressure demands.

In conclusion, the citizen's status in marriage and divorce must be secured to him throughout our entire territory. Marriage for adults must not be made more difficult. Children must be protected. Divorce must be made available for the many as well as for the few. And finally, we shall get no more enlightened law than we demand.—*Extracts, see 2, page 214.*

MRS. E. JEAN NELSON PENFIELD

Member of the New York Bar

IN MANY STATES there are seven, eight, nine and ten specified causes for divorce, ranging from infidelity to incompatibility, indignities and temper. Conceding the fact that in the vast majority of cases, the divorce is secured solely for the purpose of remarriage, we have no reason to complain if the rest of the world points to us as a nation recognizing tandem polygamy!

As with the law of divorce, so with the law of marriage, each State has a separate and distinct code.

Continued on next page

Con—continued

MILTON IVES LIVY—continued

might work a hardship, owing to a party's lack of means; but this is an ordinary case. The law offers to all the same remedies and redress, but it provides no one with money to carry on a litigation; and the poor suitor is compelled to submit to an erroneous decision, honestly given or not, which the wealthy one is able to have corrected by an appeal to a higher tribunal. Further, to every man and woman it is left to marry in that State whose policy of marriage and divorce best suits his of her inclinations.

Society has so far developed in its process of evolution that the bigotry of the dark ages is almost a thing of the past, greater freedom of divorce today is due to a broader religious and social thought; to the larger opportunities women now enjoy, to modern, social and economic conditions and to the increased importance attached to the happiness of the individual. Divorce is a remedy, not a disease, its increase, even if a symptom, is not a cause of decadence. Stricter laws do not make less divorce, they do not improve morals; this is shown by the history of the Middle Ages; when the doctrine of the indissolubility of marriage was uniformly accepted, family morals were worst. It is shown by the experience of France and of South Carolina.

Considerable freedom of divorce is necessary to maintain the dignity and stability of the marriage relation; our strict laws, make for deplorable social conditions, one of its evil effects is the migration for the purpose of divorce of numerous couples to Nevada and France and other countries. Only the rich can afford this and their example to the rest of the community makes for discontent, and a sharper demarcation between the rich and poor.—*Extracts, see 1, p. 214.*

RUTH HALE

LEGISLATING for the future on the basis of what can by its very nature be only surmise, results merely in things like the Fourteenth, Fifteenth, and Eighteenth Amendments—things to be flouted in openness, in safety, in cynical derision. They are a drag on the processes they hope to speed.

Nothing in the world but calamity and humiliation has ever resulted from passing a law in advance of the general custom; in other words, passing a law before public thought, public feeling, and public behavior have finally fused and come to rest on some plateau—even if only for a temporary pause.

Let us see if it will not be possible to demonstrate that this precise time is the worst of all possible times for legislative interference—strictly speaking, Federal legislative interference—with the legal institution of marriage, and with its greatest military asset, divorce. Incidentally, it should be conceded at once to those who object to divorce on the ground that it threatens marriage as we now know it, that they are entirely right. If marriage is not threatened and furthermore not altered almost beyond recognition, there is certainly no point to divorce. Divorce has, as its underlying intention, whether admitted or not, another marriage. Otherwise packing a suit-case, banging the door, and going with Nora out into the night, is all that anybody need ask.

Probably the most perilous of the ideas that underlie marriage is that in which, both socially and legally, it is

Continued on next page

Pro—continued

MRS. E. JEAN NELSON PENFIELD—continued

All of our States, for instance, require some form of marriage license, imperfect though it be, but in 26 States the statute is nullified by recognition of the common law marriage, which, by statute has been abolished in England for over 150 years.

Nineteen of our States have no restrictions upon the marriage of persons suffering from physical or mental disabilities, while in 14 of these States which prohibit such marriages, the indefiniteness of the law makes it difficult of enforcement, as the responsibility is not placed upon any public official.

No one need be reminded that public sentiment must precede legislation, and that public sentiment in turn follows education in home and school and church; but, with the disgraceful facts before us and with years of warning from the best thinkers of the world behind us, are we not ready for effective legislative action?

Legal reform can come in either of two ways. We can work to improve our State laws, or we can secure federal legislation, through constitutional amendment. The work through State legislative enactment has been in progress for many years, and while there has been gradual improvement along many lines, no appreciable uniformity has been secured. Signal as has been the work of the National Conference of Commissioners on Uniform State laws along the lines of commercial legislation during more than thirty years, we find no acts proposed by the conference involving great moral and social issues that have been widely adopted throughout the country. Adopting the annulment of marriage and divorce act drafted by the National Congress on Uniform Divorce Laws, which was called by the Hon. Samuel W. Pennypacker in 1906, the Conference of Commissioners has succeeded in securing its adoption in only three States.

I yield to no one in recognition of the importance of preserving the doctrine of State's rights, and I am convinced that it is neither wise nor proper to seek the cure for neglected or mistaken State legislation through federal channels. Our States grow strong through internal development. But surely no sane interpretation of the doctrine of States' rights would condemn a great nation like the United States, faced by a situation of fundamental national importance, to depend upon the inadequate and varying enactments of State governments in a case where a national standard is imperatively demanded, simply because the situation to be met happened to be one undreamed of at the time the constitution was adopted. Such talk is bosh and nonsense. Patriotism demands not only loyalty to the Constitution as our fundamental law, and reverence for its great traditions, but wise amendment whenever dictated by clearly defined, developing needs. To advocate anything less, is not to defend and preserve either the Constitution or the nation, but to presage the failure of the Constitution and the destruction of the nation.

Can any one say that essential as it is to the permanence of our national life to have our currency established by national standards so that a dollar bill will represent one hundred cents in value in every State alike, that it is any more important than to have the great issues flowing from marital status, stabilized by national standards? True it is, if each State, on the theory of States' rights, were allowed to set up separate monetary

Continued on next page

Con—continued

RUTH HALL—continued

most deeply embedded, namely, that it can make two people into one. Now of course this is pure nonsense, but as a fiction it could always save its face in any extra-domestic relation by having the wife cease to exist. The English Common Law providing for this has been widely and variously amended, but it is still the basic legal theory of marriage, and until somebody blows that out of the water, there can be very little whole-hearted or hopeful defense of marriage. We must of necessity turn to and improve it.

It is obviously useless any longer to say that you must accept the old marriage whether you like it or not. There was once one thing which prevented women from walking out of a marriage which they did not like, and that was economic necessity. The economic independence of women is not yet wholly accomplished, of course. But it will be. It has far too much head start now to have anything more done about it than to watch it grow. And already it is of proportions to give pause to those who say that an unsatisfactory marriage must merely be made the best of. Already it is only the feebler, less equipped, less literate, and less spirited among women who cannot make their own livings.

It may be objected that the immediately proposed Constitutional Amendment—the Capper Bill—is entirely harmless concerning marriage (though it is certainly not helpful), and that it provides many grounds for divorce, conspicuously more than are now conceded by many of the several States. Well, that is something to think about, true enough, and it is likely that the Capper Bill as it now stands, not needlessly to affright ourselves with what the churches and the women's clubs would do to it before it could be passed, represents about as good a bargain as we could drive at the present time with the solons. After all, it must be remembered that most of what we have done to marriage up to this time is sabotage, and that we have never made an open show of strength on behalf of our feelings, and that we are by no means organized to show strength at short notice. But the Capper Bill, for all its mildness and liberality, is nowhere nearly so good as it ought to be. Even if it required of every State the freedom of divorce now prescribed by the most indulgent, which it does not do, nor will it, it would still not be good enough. Even in the most divorcing of States, most fine and honest grounds are barred, and collusion is barred everywhere.

That spiritual perceptiveness which holds that a divorce must on no account be granted if both persons want it, or if both have been unfaithful to the marriage, instead of merely one, can hardly be respected as a source of law or precept. Sweden already has collusive divorce. People are agitating for it in many countries, and it is so essentially right and reasonable that it is bound to be admitted soon or late. Must we amend our amendment?

Marriage has gone through many cycles, even in accessible history. It will likely go through many more. Between upsets, it is fairly stable—that is to say, an age which creates a good marriage form is likely to endow the future for a considerable time forward, though never forever. Let us have an amendment, if we must, when we have re-arrived at our repose. Meanwhile, let us rather endure the muddle, the chaos, the strife, and all the rest of it than buy a little wicked peace when we are

Continued on next page

Pro—continued

Mrs. E. Jean Nelson Penfield—continued

standards, we should soon see commercial chaos and ruin. So is it also true that unless we standardize the laws which control the equally fundamental and important issues involved in the family as an institution, we shall soon see moral chaos and ruin.

The trouble with depending upon State action is that we could never be sure from one day to another what local bars might be let down; and even if forty-seven States should individually adopt a uniform marriage and divorce law, the forty-eighth might, and probably would, remain the divorce mecca of the nation, while we could not be certain of any uniformity in the administration of the law. What we need is a federal law, and uniform administration of the law.

What we need is a federal law in keeping with the best American tradition, that will make definite and certain what marital standards and rights exist in the United States.

The immediately important work is to arouse a vital national consciousness, and to provide for constitutional amendment, enabling Congress to act. Personally it seems to me unwise to dissipate energy at this time in discussing the details of any proposed act which may come before Congress in the future. The question before the American people now is whether or not marriage and divorce shall be classed with the currency, naturalization, bankruptcy, interstate commerce, the postal system and like matters, as of supreme national concern. If so, then Congress should be empowered by constitutional amendment to establish federal laws on marriage and divorce.—*Extracts, see 6, p. 214.*

Mrs. Ella A. Boole

President National W. C. T. U.

A CONSTITUTIONAL amendment providing for uniform marriage and divorce laws would remedy many inequalities and establish the same standard for marriage and divorce throughout the country.

It is a self-evident fact that the feeble-minded should not be permitted to marry; that epileptics, the insane, and those afflicted with communicable diseases should be forbidden to enter into the marriage relation.

The facts are that some States now prohibit the above mentioned people to marry, but the law is evaded through going to another State where it is allowed.

The same is true of divorce cases. The law of New York is strict, but even Reno is not so far away that those desiring divorce can not take advantage of the difference in the law. Remarriage of divorcees is brought about in the same way, even though New York may have only one cause for absolute divorce.

The fact is, in all questions dealing with public morals, the same standards should prevail throughout the United States. It is impossible to secure this through legislation in individual States. Therefore, there is but one remedy—Federal legislation, and in the event this would not be possible, an amendment to the Federal constitution that would authorize it.

My own private opinion would be that the detail should be left for the Federal law, while the amendment should simply carry with it authority to make such laws.—*Extracts, see 4, p. 214.*

Con—continued

Ruth Hale—continued

in honor bound to keep fighting. We do not dare be pleased by the prospect of the law-givers coming up with flying buttresses for the ruins. Only time is our true friend.—*Extracts, see 2, p. 214.*

Editorial, The Freeman

MORE THAN a quarter of a century ago Elizabeth Cady Stanton saw the true character of the movement for an amendment to the Federal Constitution giving Congress the power to legislate on marriage and divorce. She saw its true character and warned the women of America against it. She pointed out that the movement was inspired by people who considered our divorce laws too liberal and really intended, under the plea of making them "uniform," to make them narrow.

Mrs. Stanton says further: "There are many advantages in leaving all these questions, as now, to the states. Local self-government more readily permits of experiments on mooted questions which are the outcome of the needs and convictions of the community. The smaller the area over which the law extends, the more pliable are the laws. By leaving the states free to experiment in their local affairs, we can judge of the working of different laws under varying circumstances, and thus learn their comparative merits. Otherwise the whole nation might find itself pledged to a scheme that a few years would prove wholly impracticable. This is a mischievous movement."

American women owe a great deal to the comparatively liberal divorce laws of some of the states. This country had no liberal legislation on this subject until 1860, when that fine visionary, Robert Dale Owen—son of Robert Owen, English social reformer and exponent of cooperation—put through the Indiana legislature a fairly liberal law. But as soon as Indiana passed a law enabling wives to free themselves from intolerable domestic yokes, women who had found the bonds of wedlock unendurable, began migrating into that state, establishing their residence—usually on money advanced by their fathers or mothers—and thus securing their divorce—and their liberty. Indiana's example spread, with the result that the position of American wives began to show a steady improvement.

Under the circumstances, we are inclined to think that the Federation of Women's clubs, if it really wants liberal divorce laws, might much more profitably devote its time to a study of the Scandinavian divorce laws; or for that matter, the law passed not so very long ago by our own state of Washington. If we are not mistaken, that commonwealth, which has not, unfortunately, shown itself to be enlightened upon many subjects, has now upon its statute books a law providing that after a couple has been separated for five years, either husband or wife may have a divorce for the asking, without giving further grounds for the application than the mere statement that the separation has lasted for five years. If the separation has not lasted five years, those who are reluctant to seek divorce on sensational grounds, or who have no sensational grounds to offer, may make application on the plea of incompatibility; though, of course, a case on such a plea is open to contest. This seems a fairly decent and humane arrangement; and we put it to the club-women in all good faith: Is it not better to attempt to secure such legislation in other states than to support a movement which may produce a law that is at the same time general and oppressive?—*Extracts, April 25, 1923.*

Pro

MRS. MILTON P. HIGGINS

Former President, National Congress of Mothers and Parent-Teachers Associations

FROM THE standpoint of the child alone, I believe there is need for a uniform marriage and divorce law. As the laws now stand a man may easily move from the State in which divorce was granted and escape the payment of alimony imposed upon him. This causes a great amount of suffering and hardship to many children.

There should be stringent measures taken to prevent the marriage of feeble-minded. A casual study of the statistics of birth among these defectives is proof conclusive that something should be done and done soon.

Every child has the right to be well born, and nothing but a thorough health examination of those desiring marriage can possibly secure such birthright to the innocent little ones.

I believe the grounds for divorce should be limited to those outlined in the Capper bill and that due time be exacted after time of application for license for careful examination of applicants, mentally, physically and historically.

The National Congress of Mothers and Parent-Teacher Associations stand steadfastly for the sanctity of marriage and will be glad to promote all measures necessary to bring it about in our country.—*Extracts, see 4, p. 214.*

EDITORIAL, WASHINGTON HERALD

SENATOR CAPPER of Kansas, who introduced a bill in the last Congress for nation-wide uniform divorce laws, at least achieved an interesting discussion.

There can be no question about the necessity of a divorce law in one State having full force in every other State.

The present situation in which a man can be single in one State, married in another, and a bigamist in a third, all at the same time, is not only logically absurd, but works vast hardship.

Surely there should be some common denominator that can be found in the problem of divorce.

The Federal Government would not tolerate any State passing a law that would abolish marriage or render it unnecessary.

By the same token it should not tolerate divorce laws in any State which would work either looseness or hardship in other States.—*June 29, 1923.*

EDITORIAL, HOUSTON POST

TEXAS LEADS the Nation in the percentage of divorces, according to the Associated Press, the percentage being one divorce to every five marriages. What is more, the percentage is increasing, according to reports. While Texans are ordinarily proud to see their State lead the Nation this is one instance where we could well afford to bring up the rear of the procession. Uniform marriage and divorce laws which would make it considerably harder to get a license to marry and no easier than at present to get a divorce would help a good deal. The hasty marriage often leads to divorce.

Laws preventing marriage of the physically or mentally unfit and requiring that marriage licenses be published in advance of marriage would cause many a couple to reconsider before too late.—*Oct. 5, 1923.*

Con

EDITORIAL, THE INDEPENDENT

A UNIFORM divorce law is no remedy for the divorce evil. A uniform divorce law is simply imposing upon the whole United States the ethical standards of one community. South Carolina permits no divorce for any cause. Oregon permits divorce for "indignities rendering life burdensome." Shall South Carolina be brought under the law of Oregon or Oregon under the law of South Carolina? Or shall both be brought under a law that neither desires? Uniformity of legal phraseology and of court procedure are desirable, so also are restrictions on interstate migration for divorce purposes. To go further than this would do little to lessen the number of divorces and nothing to lessen the divorce evil.

The alleged causes for divorce are rarely the real reasons. Unless the plaintiff is vindictive the grounds brought forward are the least serious and disgraceful that the law allows. On the other hand, those who are determined on divorce will not shrink from the ostensible commission of a statutory crime. Yet probably most divorced couples do actually separate by mutual consent and would much prefer not to bring disgraceful charges against one another unless the law obliged them to.

The American rate of one divorce for twelve marriages is deplored and denounced on all sides. Yet when one knows intimately the causes which impel any particular couple to separate he usually comes to the conclusion that it would be a wrong to themselves and to the community for them to continue living together.

Whether one argues for greater or less freedom of divorce or for no divorce at all, these plain facts should be taken into consideration.—*Extracts, May 1, 1916.*

HON. SAMUEL M. SHORTRIDGE—continued from p. 196

the benefits derived from the woman suffrage and prohibition amendments which were preceded by many diverse laws on the subjects in the various states.

But these amendments all tend towards centralizing power in the National Government, and to that extent taking it from the several states. I am not now saying that that is wise or unwise. We are not thinking of today but are looking into the far, far future for our country. Many look upon this centralizing tendency with alarm. Many thoughtful men and women are opposed to this centralizing tendency in respect to many matters.

If it was wise to centralize in respect to suffrage, to centralize in respect to prohibition, and if it be wise to centralize in respect to marriage and divorce, so, it is argued, it will be claimed that we should be centralized in regard to the crime of embezzlement, or forgery, or obtaining money under false pretenses, and in regard, indeed, to all classes of high misdemeanors, felonies, and crimes of all kinds and character whatsoever. It is argued that this tendency is going to absorb, so to speak, the states and merge them all into the Nation; and many look upon that tendency with disfavor and alarm. So that, apart from the merits of the subject matter of this resolution, the problem is a very serious one in respect to our form and system of government, founded by the fathers, and under which we have lived and grown and prospered as a Nation.—*Extracts, see 5, p. 214.*

The White House

EDITOR'S NOTE: In the October, 1925, number, THE CONGRESSIONAL DIGEST inaugurated a new department. This department will report each month the outstanding public matters which have had the attention of the President during the preceding month. Such public matters will include appointments made by the President, addresses delivered by the President, executive orders, and proclamations issued by the President, etc. In the January, 1924, number of THE CONGRESSIONAL DIGEST, the Hon. Wm. Tyler Page, Clerk of the House of Representatives, U. S. Congress, fully described the position of the Executive under the Constitution. The July-August, 1924, number of THE CONGRESSIONAL DIGEST was devoted to a detailed account of the early and present system of election of the President, together with an article on the Powers and Duties of the President under the Constitution.

The President's Calendar
For the Period April 25, 1927 to May 27, 1927

Addresses

May 3, 1927—Address of President Coolidge before the Third Pan American Commercial Conference at Washington, D. C.

May 17, 1927—Address of President Coolidge at the Annual Session of the American Medical Association at Washington, D. C.

Proclamations

April 21—Approving an amendment to the Migratory Bird Treaty Act.

April 27—A proclamation approving a reciprocal copyright agreement between the United States Government and the Government of Czechoslovakia.

April 29—Authorizing exchange of land in National Forests in Oregon.

Executive Orders (Public)

April 30—An executive order restoring to control of the Territory of Hawaii two lots in Honolulu.

May 2—An executive order withdrawing land in California for township purposes.

May 5—An executive order extending for 10 years the period of allotment of Indian lands in White Earth Reservation in Minnesota.

May 6—An executive order revoking order withdrawing for survey lands in New Mexico.

May 7—An executive order consolidating land office districts of Visalia and Sacramento, California.

May 9—An executive order fixing Saturday half holidays in Government departments from first Saturday in June to last Saturday in September, inclusive.

May 10—An executive order designating Eugene Meyer as Farm Loan Commissioner.

May 13—An executive order governing entry to the United States of Alien Steamer arriving under other circumstances than as Members of crews of vessels on which they arrive.

Appointments (Recess)

April 5—William C. Coleman, Maryland, to be District Judge, Second District of Maryland.

April 5—Johnson J. Hayes, North Carolina, to be District Judge for the Middle District of North Carolina.

April 5—Martin Brown, Michigan, to be United States Marshal for the Western District of Michigan.

April 7—Elliott Northcott, West Virginia, to be Circuit Judge for the Fourth Circuit.

April 27—Forest D. Siefkin, of Illinois, Member Board of Tax Appeals.

May 3—Miss Helen Varick Boswell, New York, Commissioner to International Exposition at Seville, Spain.

May 5—Eugene Meyer, New York; George R. Cooper, D. of C., members of the Federal Farm Loan Board.

May 20—Augustus M. Hand, New York, U. S. Circuit Judge, Second Circuit.

Simon Adler, New York, U. S. District Judge, Western District of N. Y.

Frederick H. Bryant, N. Y., U. S. District Judge Northern district of N. Y.

Joseph C. Crew, New Hampshire, Ambassador Extraordinary and Plenipotentiary to Turkey.

May 20—Robert E. Olds, Minnesota, under Secretary of State.

Efforts to Secure a Uniform Law on Marriage and Divorce by Federal Action

Continued from page 185

8. A marriage which is legal in the State where contracted shall be legal in all States.

9. Divorce may be decreed on the following grounds and on no other: a. Adultery. b. Cruel and inhuman treatment. c. Abandonment or failure to provide for a period of one year. d. Incurable insanity. e. Conviction of an infamous crime.

10. No decree of divorce to be granted without the appearance of counsel for defendant, and, if no such appearance, the prosecuting attorney of the judicial district shall defend in behalf of the State.

11. Defendant must be served with a personal summons if a resident of the State in which suit is brought; if not a resident, service by publication is allowed.

12. An interlocutory decree in favor of the plaintiff shall become final only after one year, and neither party may marry another before a final decree.

13. Alimony may be decreed "as the circumstances of the case shall render just and proper," whether asked for in the petition or not.

14. In providing for the custody, support and education of the minor children, the court shall favor the claims of the mother if she is mentally and morally competent, but the best interests of the children must be regarded. If the custody of the children is vested in either parent, the other may be allowed to visit them and may be required to contribute to their support "according to his or her ability," and failure to comply with the order of the court regarding alimony or support of the children is declared a criminal offense, to be punished by a fine up to $500 or imprisonment up to one year or by both.

15. A divorce decreed in one State by a court having jurisdiction shall be recognized in all States.

The resolution was referred to the Senate Judiciary Committee but no further action was taken.

The Supreme Court of the United States

EDITOR'S NOTE: This department of THE CONGRESSIONAL DIGEST began with Vol. 3, No. 1, and is devoted to a brief non-technical review of current decisions of the U. S. Supreme Court which are of general public interest. The June, 1923, number of the THE CONGRESSIONAL DIGEST printed the provisions of the Constitution of the United States upon which the Judicial Branch of our Federal Government rests. This number contained an account of the U. S. Supreme Court and the system of inferior federal courts, the relation of the Judicial Branch to the Legislative and Executive Branches of the Federal Government, and the relation between the Federal Judiciary and the States. The U. S. Supreme Court, its present procedure and work, were also described.

Court reconvened on May 17, and will finally adjourn the present term on June 6.

The October, 1926 Term—October, 1926-June, 1927

Constitutionality of California's Criminal Syndicalism Act Upheld

The Case—No. 3. Charlotte Anita Whitney, Plaintiff in Error, vs. The People of the State of California. In Error to the District Court of Appeal, First Appellate District, Division One, of the State of California.

The Decision—The judgment of the lower court was affirmed and the Court held that the California Syndicalism Act was not a violation of the Fourteenth Amendment and is therefore constitutional. Mr. Justice Brandeis delivered a separate concurring opinion in which Mr. Justice Holmes joined.

The Opinion—The opinion of the Court was delivered by Mr. Justice Sanford on May 16, 1927, and is in part as follows:

"The plaintiff in error was charged, in five counts, with violations of the Criminal Syndicalism Act of California. She was tried, convicted on the first count, and sentenced to imprisonment. The judgment was affirmed by the District Court of Appeal.

"The pertinent provisions of the Criminal Syndicalism Act are:

'Section 1. The term 'criminal syndicalism' as used in this act is hereby defined as any doctrine or precept advocating, teaching or aiding and abetting the commission of crime, sabotage (which word is hereby defined as meaning wilful and malicious physical damage or injury to physical property), or unlawful acts of force and violence or unlawful methods of terrorism as a means of accomplishing a change in industrial ownership or control, or effecting any political change.

'Sec. 2. Any person who: . . . 4. Organizes or assists in organizing, or is or knowingly becomes a member of, any organization, society, group or assemblage of persons organized or assembled to advocate, teach or aid and abet criminal syndicalism . . . Is guilty of a felony and punishable by imprisonment.

"The defendant, a resident of California, had been a member of the Local Oakland branch of the Socialist Party. This Local sent delegates to the national convention of the Socialist Party held in Chicago in 1919, which resulted in a split between the 'radical' group and the old-wing-Socialists. The 'radicals'—to whom the Oakland delegates adhered—being ejected, went to another hall, and formed the Communist Labor Party of America.

"Shortly thereafter the Local Oakland withdrew from the Socialist Party, and sent accredited delegates, including the defendant, to a convention held in Oakland in November, 1919, for the purpose of organizing a California branch of the Communist Labor Party.

"The defendant testified that it was not her intention that the Communist Labor Party of California should be an instrument of terrorism or violence, and that it was not her purpose or that of the Convention to violate any known law.

"In the light of this preliminary statement, we now take up, in so far as they require specific consideration, the various grounds upon which it is here contended that the Syndicalism Act and its application in this case is repugnant to the due process and equal protection clauses of the Fourteenth Amendment.

"1. While it is not denied that the evidence warranted the jury in finding that the defendant became a member of and assisted in organizing the Communist Labor Party of California, and that this was organized to advocate, teach, aid or abet criminal syndicalism as defined by the Act, it is urged that the Act, as here construed and applied, deprived the defendant of her liberty without due process of law in that it has made her action in attending the Oakland convention unlawful by reason of 'a subsequent event brought about against her will, by the agency of others,' with no showing of a specific intent on her part to join in the forbidden purpose of the association, and merely because, by reason of a lack of 'prophetic' understanding she failed to foresee the quality that others would give to the convention. This contention, while advanced in the form of a constitutional objection to the Act, is in effect nothing more than an effort to review the weight of the evidence for the purpose of showing that the defendant did not join and assist in organizing the Communist Labor Party of California with a knowledge of its unlawful character and purpose. This question, which is foreclosed by the verdict of the jury—sustained by the Court of Appeal over the specific objection that it was not supported by the evidence—is one of fact merely which is not open to review in this Court, involving as it does no constitutional question whatever.

"2. It is clear that the Syndicalism Act is not repugnant to the due process clause by reason of vagueness and uncertainty of definition. It has no substantial resemblance to the statutes held void for uncertainty under the Fourteenth and Fifth Amendments not fixing an ascertainable standard of guilt. The Act, plainly, meets the essential requirement of due process that a penal statute be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties, and be couched in terms that are not so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application.

"3. Neither is the Syndicalism Act repugnant to the equal protection clause, on the ground that as its penalties are confined to those who advocate a resort to violent and unlawful methods as a means of changing industrial and political conditions, it arbitrarily discriminates between such persons and those who may advocate a resort to these methods as a means of maintaining such conditions.

"It is settled by repeated decisions of this Court that the equal protection clause does not take from a State

the power to classify in the adoption of police laws, but admits of the exercise of a wide scope of discretion, and avoids what is done only when it is without any reasonable basis and therefore is purely arbitrary; and that one who assails the classification must carry the burden of showing that it does not rest upon any reasonable basis, but is essentially arbitrary.

"The Syndicalism Act is not class legislation; it affects all alike, no matter what their business associations or callings, who come within its terms and do the things prohibited. And there is no substantial basis for the contention that the legislature has arbitrarily or unreasonably limited its application to those advocating the use of violent and unlawful methods to effect changes in industrial and political conditions; there being nothing indicating any ground to apprehend that those desiring to maintain existing industrial and political conditions did or would advocate such methods. That there is a wide-spread conviction of the necessity for legislation of this character is indicated by the adoption of similar statutes in several other States.

"4. Nor is the Syndicalism Act as applied in this case repugnant to the due process clause as a restraint of the rights of free speech, assembly, and association.

"That the freedom of speech which is secured by the Constitution does not confer an absolute right to speak, without responsibility, whatever one may choose, or an unrestricted and unbridled license giving immunity for every possible use of language and preventing the punishment of those who abuse this freedom; and that a State in the exercise of its police power may punish those who abuse this freedom by utterances inimical to the public welfare, tending to incite to crime, disturb the public peace, or endanger the foundations of organized government and threaten its overthrow by unlawful means, is not open to question.

"By enacting the provisions of the Syndicalism Act the State has declared, through its legislative body, that to knowingly be or become a member of or assist in organizing an association to advocate, teach or aid and abet the commission of crimes or unlawful acts of force, violence or terrorism as a means of accomplishing industrial or political changes, involves such danger to the public peace and the security of the State, that these acts should be penalized in the exercise of its police power. That determination must be given great weight. Every presumption is to be indulged in favor of the validity of the statute, and it may not be declared unconstitutional unless it is an arbitrary or unreasonable attempt to exercise the authority vested in the State in the public interest.

"We find no repugnancy in the Syndicalism Act as applied in this case to either the due process or equal protection clauses of the Fourteenth Amendment on any of the grounds upon which its validity has been here challenged."

* * * * *

The separate opinion of Mr. Justice Brandeis in which Mr. Justice Holmes joined is in part as follows:

"Miss Whitney was convicted of the felony of assisting in organizing, in the year 1919, the Communist Labor Party of California, of being a member of it, and of assembling with it. These acts are held to constitute a crime, because the party was formed to teach criminal syndicalism. The statute which made these acts a crime restricted the right of free speech and of assembly theretofore existing. The claim is that the statute, as applied, denied to Miss Whitney the liberty guaranteed by the Fourteenth Amendment.

"The felony which the statute created is a crime very unlike the old felony of conspiracy or the old misdemeanor of unlawful assembly. The mere act of assisting in forming a society for teaching syndicalism, of becoming a member of it, or of assembling with others for that purpose is given the dynamic quality of crime. There is guilt although the society may not contemplate immediate promulgation of the doctrine. Thus the accused is to be punished, not for attempt, incitement or conspiracy, but for a step in preparation, which, if it threatens the public order at all, does so only remotely. The novelty in the prohibition introduced is that the statute aims, not at the practice of criminal syndicalism, nor even directly at the preaching of it, but at association with those who propose to preach it.

"The legislature must obviously decide, in the first instance, whether a danger exists which calls for a particular protective measure. But where a statute is valid only in case certain conditions exist, the enactment of the statute cannot alone establish the facts which are essential to its validity. Prohibitory legislation has repeatedly been held invalid, because unnecessary, where the denial of liberty involved was that of engaging in a particular business. The power of the courts to strike down an offending law are no less when the interests involved are not property rights, but the fundamental personal rights of free speech and assembly.

"This Court has not yet fixed the standard by which to determine when a danger shall be deemed clear; how remote the danger may be and yet be deemed present; and what degree of evil shall be deemed sufficiently substantial to justify resort to abridgement of free speech and assembly as the means of protection. To reach sound conclusions on these matters, we must bear in mind why a State is, ordinarily, denied the power to prohibit dissemination of social, economic and political doctrine which a vast majority of its citizens believes to be false and fraught with evil consequence.

"In order to support a finding of clear and present danger it must be shown either that immediate serious violence was to be expected or was advocated, or that the past conduct furnished reason to believe that such advocacy was then contemplated.

"A police measure may be unconstitutional merely because the remedy, although effective as means of protection, is unduly harsh or oppressive. Thus, a State might, in the exercise of its police power, make any trespass upon the land of another a crime, regardless of the results or of the intent or purpose of the trespasser. It might, also, punish an attempt, a conspiracy, or an incitement to commit the trespass. But it is hardly conceivable that this Court would hold constitutional a statute which punished as a felony the mere voluntary assembly with a society formed to teach that pedestrians had the moral right to cross unenclosed, unposted, waste lands and to advocate their doing so, even if there was imminent danger that advocacy would lead to a trespass. The fact that speech it likely to result in some violence or in destruction of property is not enough to justify its suppression. There must be the probability of serious injury to the State. Among free men, the deterrents ordinarily to be applied to prevent crime are education and punishment for violations of the law, not abridgement of the rights of free speech and assembly.

"I am unable to assent to the suggestion in the opinion of the Court that assembling with a political party, formed to advocate the desirability of a proletrian revolution by mass action at some date necessarily far in the future, is not a right within the protection of the Fourteenth Amendment. In the present case, however, there was other testimony which tended to establish the existence of a conspiracy, on the part of members of the International Workers of the World, to commit present serious crimes; and likewise to show that such a conspiracy would be furthered by the activity of the society of which Miss Whitney was a member. Under these circumstances the judgment of the State court cannot be disturbed.

"Our power of review in this case is limited to the question whether a right guaranteed by the Federal Constitution was denied. We lack here the power occasionally exercised on review of judgments of lower federal courts to correct in criminal cases vital errors, although the objection was not taken in the trial court. This is a writ of error to a state court. Because we may not enquire into the errors now alleged, I concur in affirming the judgment of the state court."—*Extracts.*

Decision on the Application of the Kansas Criminal Syndicalism Act

The Case—No. 48. Harold B. Fiske, plaintiff in error, vs. The State of Kansas, in error, to the Supreme Court of the State of Kansas.

The Decision—The decree of the lower court was reversed. The Court held that the Kansas Criminal Syndicalism Act as applied in this case was an arbitrary and unreasonable exercise of the police power, in violation of the due process clause of the Fourteenth Amendment.

The Opinion—Mr. Justice Sanford delivered the opinion of the Court on May 16, 1927, and is in part as follows:

"The only substantial Federal question presented to and decided by the State court, and which may therefore be re-examined by this Court, is whether the Syndicalism Act as applied in this case is repugnant to the due process clause of the Fourteenth Amendment.

"The relevant provisions of the Act are:

" 'Section 1. Criminal Syndicalism is hereby defined to be the doctrine which advocates crime, physical violence, arson, destruction of property, sabotage, or other unlawful acts or methods, as a means of accomplishing or effecting industrial or political ends, or as a means of effecting industrial or political revolution, or for profit. . . . Sec. 3. Any person who, by word of mouth, or writing, advocates, affirmatively suggests or teaches the duty, necessity, propriety or expediency of crime, criminal syndicalism, or sabotage . . . is guilty of a felony . . .'

"The information charged that the defendant did 'by word of mouth and by publicly displaying and circulating certain books and pamphlets and written and printed matter, advocate, affirmatively suggest and teach the duty, necessity, propriety and expediency of crime, criminal syndicalism, and sabotage by . . . knowingly and feloniously persuading, inducing and securing' certain persons 'to sign an application for membership in . . . and by issuing to' them 'membership cards' in a certain Workers 'Industrial Union,' a branch of and component part of the Industrial Workers of the World organization, said defendant then and there knowing that said organization unlawfully teaches, advocates and affirmatively suggests: 'That the working class and the employing class have nothing in common, and that there can be no peace so long as hunger and want are found among millions of working people and the few who make up the employing class have all the good things of life.' And that, 'Between these two classes a struggle must go on until the workers of the World organize as a class, take possession of the earth and the machinery of production and abolish the wage system.' And that: 'Instead of the conservative motto, "A fair day's wages for a fair day's work" we must inscribe on our banner the revolutionary watchword, "Abolition of the wage system." By organizing industrially we are forming the structure of the new society within the shell of the old'.

"Here the State court held the Syndicalism Act not to be repugnant to the due process clause as applied in a case in which the information in effect charged the defendant with violation of the Act in that he had secured members in an organization which taught, advocated and affirmatively suggested the doctrines set forth in the extracts from the preamble to its constitution, and in which there was no evidence that the organization, taught, advocated or suggested any other doctrines. No substantial inference can, in our judgment, be drawn from the language of this preamble, that the organization taught, advocated or suggested the duty, necessity, propriety, or expediency of crime, criminal syndicalism, sabotage or other unlawufl acts or methods. There is no suggestion in the preamble that the industrial organization of workers as a class for the purpose of getting possession of the machinery of production and abolishing the wage system, was to be accomplished by any other than lawful methods; nothing advocating the overthrow of the existing industrial or political conditions by force, violence or unlawful means. And standing alone, as it did in this case, there was nothing which warranted the court or jury in ascribing to this language, either as an inference of law or fact, 'the sinister meaning attributed to it by the state.' In this respect the language of the preamble is essentially different from that of the manifesto involved in Gitlow v. New York, and lacks the essential elements which brought that document under the condemnation of the law. And it is not as if the preamble were shown to have been followed by further statements or declarations indicating that it was intended to mean, and to be understood as advocating, that the ends outlined therein would be accomplished or brought about by violence or other related unlawful acts or methods. Compare *Whitney* v. *California* and *Burns* v. *United States*, this day decided.

"The result is that the Syndicalism Act has been applied in this case to sustain the conviction of the defendant, without any charge or evidence that the organization in which he secured members advocated any crime, violence or other unlawful acts or methods as a means of effecting industrial or political changes or revolution. Thus applied the Act is an arbitrary and unreasonable exercise of the police power of the State, unwarrantably infringing the liberty of the defendant in violation of the due process clause of the Fourteenth Amendment. The judgment is accordingly reversed, and the case is remanded for further proceedings not inconsistent with this opinion."—*Extracts.*

Recent Government Publications of General Interest

The following publications issued by various departments of the Government may be obtained from the Superintendent of Documents, Government Printing Office, Washington, D. C.

Agriculture

"Cooperation in Agriculture, a Selected and Annotated Reading List, with Special Reference to purchasing, Marketing, and Credit, Including only Works Printed in English"; compiled by Chastina Gardner. (Agriculture Misc. Circular 97.) Price, 15 cents.

"Diseases and Pests of Fruits and Vegetables"; by M. B. Waite, and others. (Agriculture Yearbook, 1925, Separate 929.) Price, 25 cents. Influences of diseases on American fruit culture, plant pathologists, plant pathology at experiment stations and universities, etc.

"Effect of Planting distances and Time of Shelling Seed on Peanut Yields;" by J. H. Beattie, and others. (Agriculture Bulletin 1478.) Price, 5 cents. Effect of planting distances on yield of peanuts, introduction, experiments in 1917, 1918, and 1919, effect of time of shelling peanut seed on germination and yield, introduction, experiments in 1922, 1923 and 1924, etc.

"Farm Real Estate Situation, 1926;" by E. H. Wiecking. (Agriculture Circular 377.) Price, 5 cents. Changes in value of farm real estate, changes in farm ownership, and sources of data and methods of compilation.

"Orchard Irrigation;" by Samuel Fortier. (Farmers' Bulletin 1518.) Price, 5 cents. Selection of locations, clearing and grading land, locating the tree rows, contour method of planting trees, cost of water, measurement of water, etc.

"Reliability and Adequacy of Farm-Price Data;" by Chas. F. Sarle. (Agriculture Bulletin 1480.) Price, 15 cents. Purpose, description of farm prices, history and methods of collecting farm prices, averaging and weighing farm prices, analysis of farm-price sample, utilization of farm-price data, etc.

"Speculative Transactions in the 1926 May Wheat Future;" by J. W. T. Duvel and G. W. Hoffman. (Agriculture Bulletin 1479.) Price, 15 cents. Nature and scope, net position compared with price, new trades compared with net price changes, etc.

"United States Census of Agriculture, 1925, Arkansas, Statistics by Counties, Final Figures." Price, 10 cents. Introduction, State tables, county tables, and map.

"United States Census of Agriculture, 1925, Louisiana, Statistics by Parishes, Final Figures." Price, 10 cents. State tables, parish tables, and map.

"United States Census of Agriculture, 1925, Mississippi, Statistics by Counties, Final Figures." Price, 10 cents. Introduction, State tables, county tables, and map.

"Workers in Subjects Pertaining to Agriculture in State Agricultural Colleges, and Experiment Stations, 1926-1927;" by Mary A. Agnew. (Agriculture Misc. Circular 87.) Price, 20 cents.

Automotive Products

"Advertising Automotive Products in Europe;" by J. A. G. Pennington. (Trade Information Bulletin 462.) Price, 10 cents. The automobile in Europe, basic factors, advertising mediums, etc.

Bullion

"The Bombay Bullion Market;" by Don C. Bliss, Jr. (Trade Information Bulletin 457.) Price, 10 cents. India as a factor in the world bullion trade, organization of the Bombay market, conduct of bullion trade in Bombay, etc.

China

"China, a Commercial and Industrial Handbook;" by Julean Arnold, and others. (Trade Promotion Series 38.) Price, $1.75. Geographic description, sketch of Chinese history, trade with specific countries, import trade of China, market development, currency, exchange, and banking, etc.

Education

"Education in the United States of America;" prepared under direction of John J. Tigert. (Education Bureau.) Price, 20 cents. Education a State function, the teaching corps, city school administration, elementary education, including kindergartens, secondary education, higher education, etc.

Flies

"Chemotropic Tests with the Screw-Worm Fly;" by D. C. Parman and others. (Agriculture Bulletin 1472.) Price, 5 cents. Work of other investigators with fly repellents, purpose of chemotropic tests, materials tried, procedure, etc.

Foreign Exchange

"Bills of Exchange, Practices in Foreign Countries Regarding Payment on Arrival Bills;" compiled by Chas. R. Gruny. (Trade Information Bulletin 464.) Price, 10 cents. Introduction, Great Britain, Australia, refusal to pay or accept pending arrival and inspection considered dishonor, effect of contract provision for inspection prior to payment, etc.

Foreign Markets

"Foreign Markets for Footwear, From Reports Submitted by Oversea Representatives of Departments of Commerce and State." (Trade Information Bulletin 458.) Price, 10 cents. Algiers, Arabia, Argentina, Australia, Austria, etc.

Foreign Trade

"Foreign Trade of United States in Calendar Year 1926." (Trade Information Bulletin 460.) Price, 10 cents. General movement of trade, commodity distribution of trade, quantity and price changes, geographical distribution of trade, etc.

Forests

"Forest Fire Prevention Handbook for School Children." (Agriculture Dept., Misc. Circular 79.) Price, 15 cents. The forests of California, causes of fires, effects of fire, fire prevention, etc.

Graphite

"Thermal Expansion of Graphite;" by Peter Hidnert, and W. T. Sweeney. (Standards Technologic Papers 335.) Price, 5 cents. Introduction, materials investigated, apparatus, results on artificial graphite, and summary.

Grocery Trade

"Atlas of Wholesale grocery Territories;" prepared by J. W. Millard. (Domestic Commerce Series No. 7.) Price, $1.25. Foreword, introduction, summary of retail and wholesale outlets, detailed trading area statistics, etc.

Industrial Accidents

Deaths from Lead Poisoning;" by Frederick L. Hoffman, LL. D. (Labor Bulletin 426.) Price, 10 cents. Statistics of chronic lead poisoning in United States and foreign countries, analysis of deaths from chronic lead poisoning in United States registration area, 1914-1924, and statistics of chronic lead poisoning from State industrial accident board.

"Proceedings of 13th Annual Meeting of International Association of Industrial Accidents Boards and Commissions, held at Hartford, Conn., Sept. 14-17, 1926." (Labor Bulletin 432.) Price, 35 cents.

"Safety Codes for the Prevention of Dust Explosions." (Labor Bulletin 433.) Price, 10 cents. Safety code for prevention of dust explosions in starch factories, safety code for prevention of dust explosions in flour and feed mills, safety code for prevention of dust explosions in terminal grain elevators, etc.

Interstate Commerce Commission

"Interstate Commerce Commission Reports, Vol. 112, Decisions of Interstate Commerce Commission of United States, April-June, 1926." Price, $2.25. Members of the Commission, table of cases, table of cases cited, opinions of the commission, etc.

Labor

"Wages and Hours of Labor in the Slaughtering and Meat Packing Industry, 1925." (Labor Bulletin 421.) Price, 25 cents. Importance of the industry, departments included in study, basic or regular full-time hours per day and per week, hours, overtime rates, and guaranteed hours of pay, etc.

"Proceedings of 18th Annual Convention of Association of Governmental Labor Officials of United States and Canada,

held at Columbus, Ohio, June, 1926." (Labor Bulletin 429.) Price, 20 cents. Officers, 1925-26, constitution, and development of the Association of Governmental labor officials.

"Union Scale of Wages and Hours of Labor, May 15, 1926." (Labor Bulletin 431.) Price, 30 cents. Average hourly rates of wages and number of changes in union scales, by trades, weekly hours of labor, by trades, per cent of change in weekly rates of wages, 1926, compared with each specified year from 1907, etc.

Malnutrition

"What is Malnutrition?" by Lydia J. Roberts. (Children's Bureau Publication 59, Revised.) Price, 5 cents. Judging nutrition of children, extent of malnutrition, causes of malnutrition, effects of malnutrition, etc.

National Parks

"Glimpses of our National Parks." (National Park Service.) Price, 10 cents. The national Parks, Yellowstone National Park, Yosemite National Park, Sequoia and General Grant National Parks, Mount Rainier National Park, Crater Lake National Park, Mesa Verde National Park, etc.

Research

"An Outline of Methods of Research with Suggestions for High School Principals and Teachers." (Education Bulletin, 1926, No. 24.) Price, 10 cents. Introduction, conditions essential to scientific research, the qualifications of the research worker, types of research problems, the questionnaire, etc.

St. Lawrence Waterway

"St. Lawrence Waterway, Report of Joint Board of Engineers Appointed by the Governments of United States and Canada on the Improvement of the St. Lawrence River Between Lake Ontario and Montreal and on Related Questions Referred to the Board by the two Governments." Price, $1.35.

Pro—continued

HON. ARTHUR CAPPER—continued from p. 196

the most part constituted of Anglo-Saxons and a small part of Scotch, French, and Irish. They were much of the same mind about marriage and divorce. Woman's economic status often held her to marriage no matter how great the misery of it. Transportation was difficult, and it took more courage than the average eloping couple have to spend several days of hardships in order to run from one state to another. Besides our forefathers were so taken up with the problems of forming a stable government that social questions—which were not then given the consideration they are today because of modern scientific research—were not taken into account. But these great men evidently did have some foresight as to what might happen when the country expanded and its populations became denser and more diverse. For they drafted into the Constitution Article V which defines the process of amendment. It is also well to point out that Article IV of the Constitution provides that full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. Now, when a court in one state dissolves the divorce granted by a court of another state it seems to me that is going against the provision of this article. And yet this has been done and the decision upheld by the supreme court of the state in which the divorce has been annulled.

It seems to me there is no greater question before the country today than that of establishing a sane, just marriage and divorce law which shall be alike in all of the states, one which shall do justice to both parties and the children which are the fruit of their union. This cannot be done without an amendment to the Constitution.—*Extracts, see 4, p. 214.*

JENNINGS C. WISE—continued from p. 200

in what manner and upon what grounds those already married might be released from that relation.

If divorce, as a legal institution, is to exist in one form or another amongst our people, is it not desirable that a common and well-defined channel be staked out for those seeking its haven? Is it not eminently wise that the divorce court be circumscribed by uniform safeguards among our people.—*Extracts, see 1, p. 214.*

Synopsis of State Laws on Marriage and Divorce

Continued from page 194

Grounds for divorce—Adultery; impotency; crime; desertion for 1 year; cruel treatment; intoxication; separation for 5 years; in the discretion of the court an absolute divorce may be decreed upon the grounds for which partial divorce may be granted.

Residence for divorce—2 years, except in certain cases.

Remarriage—After 1 year. If before, it is illegal and void.

Wyoming

Marriage Age Limits—Males, 18; females, 16; consent necessary for persons under 21.

Marriages Prohibited—Incestuous, including first cousins; miscegenetic marriages.

Common Law Marriages—Status not clear, but held a presumption of marriage.

Grounds for divorce—Adultery; impotency; crime; desertion for 1 year; intoxication; cruelty; neglect; indignities; vagrancy of husband; insanity.

Residence for divorce—1 year, unless marriage solemnized in state and plaintiff remained citizen thereof.

Remarriage—Prohibited within 1 year.

Sources from Which Material in This Number is Taken

Articles for which no source is given have been specially prepared for this number of The Congressional Digest

1—Selected Articles on Marriage and Divorce, compiled by Julia E. Johnsen, H. W. Wilson Co., 1925.
2—The Forum, September, 1926.
3—The Woman Citizen, August, 1926.
4—68th Cong., 1st Sess. Hearings before sub-committee of Senate Judiciary Committee on S. J. Res. 5.
5—67th Cong. 1st Sess. Hearings before sub-committee of the Senate Committee on the Judiciary on S. J. Res. 21.
6—Excerpts from an address given before the National Convention of Women Lawyers at Minneapolis on August 28, 1923.
7—64th Cong. 1st Sess. Hearings before House Committee on the Judiciary, on H. J. Res. 48.
8—Pictorial Review, March, 1923.
9—Annals of the American Academy of Political and Social Science, May, 1923.